88-1340

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1988

CHARLES F. WISHART,
and BOBBIE S. WISHART,
Appellants,
vs.
LESLIE M. BATES,
and, RANDALL A. BATES,
Appellees,

APPEAL FROM THE SUPREME COURT
OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

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and,
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Appellants appear pro se.

QUESTIONS PRESENTED

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QUESTION I

WAS THE CAUSE AT ISSUE SO AS TO ALLOW THE COURT TO SET IT FOR PRETRIAL OR TRIAL PURSUANT TO RULE 1.440 OF THE FLORIDA RULES OF CIVIL PROCEDURE SO LONG AS THERE WAS INTER-ALIA A MOTION TO STRIKE WISHARTS' LAST PLEADING? 15

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MUST THE CHRISTIAN ETHIC STILL BE ENFORCED BY THE COURTS, AND IF NOT, WHAT ETHICAL VALUE SYSTEM MUST THE COURT THEN ADHERE TO IN LIEU THEREOF? 7

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CHARLES F. WISHART*
BOBBIE S. WISHART*
LESLIE M. BATES
RANDALL A. BATES†

* Petitioners in this Court.

† Did not make an appearance below.

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vs.
LESLIE M. BATES,
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Appellees,

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

Charles and Bobbie Wishart, Appellants, appeal the final judgement of the Supreme Court of Florida, dated September 8, 1988, reh. den., November 8, 1988, which opinion ignored the petition to adhere to the Christian Ethical Values in making its decision, as required by Florida Law and as well by one or more of the following treaties, raised and denied below:

Treaty of Amity, Settlement and Limits, Article V between the United States of America and His Catho-

lic Majesty, dated February 22, 1819, 8 U.S. Stat. at Large 252 (III-506);

Paris Peace Treaty (1898), Article X, With the United States of America and the King of Spain, dated December 10, 1898, 30 U.S. Stat. at Large 1754 (VI-1);

and, Treaty of Friendship and General Relations between the United States and Spain, dated July 3, 1902. 33 U.S> Stat. at Large 2105 (III: p. 508)

The grounds for invoking appeal is based upon the denial of rights granted by the aforesaid treaties, and as a consequence, the many abuses of due process and equal protection rights, denied the Wisharts thereby.

OPINION BELOW

The Supreme Court of the State of Florida opinion (App.A. *infra*) is reported as *Wishart v. Bates*, 531 So. 2d 955 (Fla. Sept. 8, 1988), reh.den. Nov. 8, 1988.

The opinion reversed in part *Bates v. Wishart*, 512 So.2d 977 (Fla. 2d DCA 1989), reh.den. Sept. 23, 1986, 86, "restoring visitation" which was in fact and effect an illegal modification of a prior visitation, that in turn was subordinate to the Wisharts' right to restoration of the Temporary Primary Residency they had enjoyed before, and were entitled to after *Wishart v. Bates*, 487 So.2d 342 (Fla. 2d DCA 1986), reh.den. May 1, 1986, with all but the 1986 opinion unlawful.

JURISDICTION

Wishart v. Bates, (1988), *Ibib*, was entered on the 8th day of September 1988, before the amendment to 28 U.S.C. § 1257(1, 2), by Public Law 100-352 [S. 952];

June 27, 1988, Sec. 3. Section 1257(a) of title 28, became operative to effectively deny the WISHARTS an appeal pursuant to Public Law 100-352 [S. 952]; Sec. 3. Section 1257(a) of title 28.

On the other hand, since the rehearing motion was disposed of on the 8th day of November 1988, and pursuant to Rule 9.020(g), Fla.R.App.P., the opinion was not rendered until the aforesaid date, this appeal was timely filed within 90 days from the 8th day of November 1988, as allowed by Public Law 100-352 [S. 952]; June 27, 1988, Sec. 7. Effective Date.

The appeal then is being docketed in this court within 90 days from the denial of rehearing below. The jurisdiction of this court is invoked under 28 U.S. C. § 1257(1) and (2).

CONSTITUTIONAL PROVISIONS AND RULES

Article VI, United States Constitution:

This constitution . . . and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary not withstanding.

First Amendment, United States Constitution:

Congress shall make no law . . . prohibiting the free execise . . .[of religion] . . . .

Fifth Amendment, United States Constitution:

No person . . . shall be deprived of life, liberty, or property, without due process of law . . . .

Fourteenth Amendment, United States Constitution:

Section 1. All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Article V, Treaty of Amity Settlement and Limits, between the United States of America and His Catholic Majesty, dated February 22, 1819, 8 U.S. Stat. at Large 252:

The inhabitants of . . . [*inter-alia*, Florida] shall be secure in the free exercise of their religion, without any restriction . . . .

Article X, Paris Peace Treaty (1898), With the United States of America and the King of Spain, dated December 10, 1898. 30 U.S. Stat. at Large 1754:

The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

Article IV, Treaty of Friendship and General Relations, between the United States and Spain, dated July 3, 1902. 33 U.S. Stat. at Large 2105:

The citizens or subjects of the two High Contracting Parties shall enjoy in the territories of the other the right to exercise their worship . . . subject to the Constitution, Laws and regulations of the respective countries.

Section 1, Declaration of Rights, Florida Constitution:

Political Power.—All political power is inherent in the people. The ennuciation herein of certain rights shall not be construed to deny or impair others retained by the people.

Section 2, Declaration of Rights, Florida Constitution:

Basic Rights.—All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; . . . No person shall be deprived of any right because of . . . religion . . . .

Section 3, Declaration of Rights, Florida Constitution:

Religious freedom.—There shall be no law . . . prohibiting of penalizing the free execise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety . . . .

Section 9, Declaration of Rights, Florida Constitution:

Due Process.—No person shall be deprived of life, liberty, or property without due process of law . . . .

Section 21, Declaration of Rights, Florida Constitution:

Access to Courts.—The courts shall be open to every person or redress of any injury, and justice shall be administered without sale, denial, or delay.

Article V, Section 3, Florida Constitution:

Supreme court,—

. . .

(b) JURISDICTION.—The Supreme Court:

. . .

(3) May review any decision of a district court of appeal that expressly . . . affects a class of constitutional officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

. . .

Article V, Section 15, Florida Constitution:

Attorneys; admission and discipline.

The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

HOW THE FEDERAL QUESTION WAS RAISED

There is a sophistry that says that the social workers may not make "moral judgements" for that would be imposing religion on the persons, a violation of the proverbial "separation of Church and State".

Having therefor protested, that the reports made by the social workers and court counsellors, all of a like mind, made it imposible to show anyone unfit, and to thus protect a child at hazard.

Having objected at trial, the WISHARTS raised the question in their appeal from JUDGE MENENDEZ' "Final Judgement of Dissolution of Marriage", by requesting the Panel in the *Wishart v. Bates*, (1986), Id. at 1, to restate the law, as contained in *State ex rel. Singleton v. Woodruff*, 13 So.2d 704, 705, (Fla. 1943), (III: p. 491) when they posed their third question:

QUESTION III

MUST THE CHRISTIAN ETHIC STILL BE ENFORCED BY THE COURTS, AND IF NOT, WHAT ETHICAL VALUE SYSTEM MUST THE COURT THEN ADHERE TO IN LIEU THEREOF?

All three treaties, were invoked, as were other authorities pointing to the necessity of having some system of ethics underlying our law, a common ground of agreed upon values, and in America we have the Christian system of ethics to which the Courts are required to adhere to, honor and enforce.

The sylogism is, laws are the codification of the mores, the moral values of a (our) society, and therefore, with no specific system of morals, there is no law.

The proof of that sylogism, look to our broken homes, violent streets, and sadly our Courts cannot tell for example whether a marriage is broken or not, why people should not be promiscuous, the hazards of homosexuality, all of which are answered in the Holy Bible, but little understood by most of our people.

STATEMENT OF THE CASE

CITATIONS:

Citations are to Charles' (The (Wisharts') 5 Volume appendix, Pages 1 to 987 as (V: p. 802) presented before the Supreme Court when Charles as a constitutional officer protested the appellate practices, used in the Table of Citations as (II-210) to help find copies of the cases, while LESLIE'S 20 page "Initial Brief" filed before the Second District, *Bates*

v. *Wishart*, (1987), *Id.* at 2, is in Volume V pages 802-821 and will be cited therefrom as (V: 802 p. 1).

PARTIES:

Charles F. (Charles) and his wife Bobbie S. (Bobbie) Wishart (Wishart or the Wisharts) are the paternal step-grandfather and grandmother of Tiffany Michelle Bates (Tiffany), the mother and step-father of Randy A. Bates (Randy) (I: pp. 17 ¶ 6 and 1, p. 18 ¶ 2 and p. 20) who is Tiffany's father, ex-husband of Tiffany's mother Leslie, and the step-son of Charles; all of whom (save Randy who participated at trial through the JUDGE MENENDEZ final hearing, but never responded thereafter) are and were from the beginning necessary parties in the family law court dissolution of marriage suit styled *Bates* v. *Wishart*, 13th Judicial Circuit, Case No. 83- 7250, and the appeals and opinions, cited by year (1986 -87 or 88) for clarity, spawned thereby, including:

> *Wishart, et ux.*, v. *Bates, et al.*, 487 So.2d 342 (Fla. 2d DCA 1986), reh den. May 1, 1986, mandate, May 16, 1986 (II: pp. 219-222).
>
> *Bates* v. *Wishart*, 512 So.2d 977 (Fla. 2d DCA 1987), reh. den. Sept. 23, 1987. (II: pp. 226-229, 231)
>
> *Wishart* v. *Bates*, 531 So.2d 955 (Fla. Sept. 8, 1988, reh.den, Nov. 8, 1988.

Charles, a party, but also an attorney at law, an officer of the court, a Constitutional officer by Article V, § 15, Attorneys; admission and discipline Fla. Const., (IV: p. 626), invoked that status to challenge the abuse of the appellate courts in *Wishart* v. *Bates* (1988) *Id.*, a discretionary petition to the Su-

preme Court opposing *Bates* v. *Wishart* (1987), in order to *inter-alia* fulfill his obligation under his oath, The Fla. Bar Jour., Vol. LX, No. 8 Sept. 1986, p. 448, "Oath of Admission" (III: p. 505), to protect and defend the Constitutions of our land, and to prevent fraud and deceit perpetrated upon or by the courts, to resist tyranny, the arbitrary use of power (or jurisdiction) as has arisen in this litigation.

Leslie joined the Wisharts as necessary parties pursuant to Section 61.131, Fla. Stat. (1983) (III: p. 503), they received, both a letter of guardianship, defined by Section 39.01 (23), Fla. Stat. (1983) (I: p. 20 and III: p. 510-512 at p. 511), and physical custody of TIFFANY (I: pp. 5 ¶ 6 & 6 ¶ 7) from Randy, and because of neglect by LESLIE kept her.

Sections 39.01 (23) and 61.131, Fla. Stat. (1983) reads in relevant part:

> **39.01. Definitions**
>
> When used in this chapter.
>
> (23) "Legal custody means a legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian . . . the right to have pysical custody of the child and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.
>
> **61.131 Notice and opportunity to be heard.** — Before a decree is made under this act, reasonable notice and opportunity to be heard shall be given to the contestants . . . [including] any person who has physical custody of the child . . . .

JUDGES NAMES AND THEIR RELEVANT ORDERS:

The Honorable Ralph Steinberg (Judge Steinberg) granted temporary primary residency status and the authority to care for Tiffany's health to Bobbie by his order entitled "Order Regarding Temporary Primary Residency Of Minor Child And Temporary Visitation, And Order Continuing The Former Order To Show Cause", dated the 28 December 1983. (II: pp. 201-202 ¶¶ 1, 2 and 6)

By this order Bobbie was granted temporary primary residency status, while Charles was distinguished as a "step" grandfather, ignoring his status under Section 61.131, Fla. Stats. (1983), wherein the order reads:

> . . .
> The Court heard testimony and argument of counsel . . . .
>
> It is therefore,
>
> ORDERED AND ADJUDGED,
>
> 1. That the temporary primary residency of the minor child, Tiffany Michelle Bates, shall be with the paternal grandmother, Bobbib Sue Wishart every Monday at 8:00 A. M. until the following Friday at 6:00.
>
> 2. That the Wife, Leslie M. Bates, shall pick up the child at the residence of Bobbie Sue Wishart each Friday at 6:00 P.M. and return the child to the primary residence at 8:00 A.M. the following Monday and shall pick up the child at 6:00 P.M. each Tuesday and return the child to

the primary residence the following Wednesday at 8:00 A.M.

. . . .

The Honorable Judge Manuel Menendez, Jr. (Judge Menendez), avoided the Wisharts invocation of the clean hands doctrine *State ex rel. Singleton* v. *Woodruff*, 13 So.2d 704, 705, (Fla. 1943) (III: p. 491), *Ryan* v. *Ryan*, 277 So.2d 266 (Fla. 1973) (III: p. 476), *Johnson* v. *Johnson*, 284 So.2d 231 (Fla. 2d DCA 1973) (IV: p. 734), and Section 61. 001, Dissolution in Chancery, Fla. Stat. (1983) (III: p. 483) against Leslie's standing before Chancery due to her misconducts (I: pp. 27-51) by the simple expedient of not addressing Wisharts' motion challenging Leslie's jurisdiction, and by not dismissing Leslie's petition, but rather by issuing his "Pretrial Conference Order" dated August 22, 1984 (II: pp. 244- 247, at 246 § 10 c)) which in relevant part reads:

> 10. In respect to the Wisharts' petition for reconsideration, Motion for Dismissal with Prejudice, Motion to Grant Custody, and Motion for Contempt this Court rules as follows:
>
> . . .
>
> c) The Wisharts' request to Dismiss the Action with Prejudice against Leslie Bates due to Default, the unclean hands of Leslie, and for the best interest of Tiffany, is *denied since this issue is moot at this time*; however, as previously mentioned [at p. 245 ¶ 3] the Wisharts shall have the right to file an amendment to their pleadings to prove the doctrine of unclean [sic] hands. . . . (Emphasis added)

The order belies itself, for if the facts presented do not show LESLIE subject to dismissal based upon the clean hands doctrine, then the motion should have

been both heard and denied, but on the other hand, if there was no grounds for the jurisictional challenge, then it follows, that the amendment should not have been allowed.

In either case, by allowing the amendment it activated Fla. R. Civ. P. 1.440 Setting Action for Trial (V: p. 952), and the matter was not at issue and could neither be pretried nor tried.

The Wisharts filed their "Grandparents' Amended Answer First Affirmative Defense" on September 4, 1984, and Leslie filed her "Motion to Strike First Affirmative Defense Alleged in Grandparents' Amended Defense" (II: pp. 248-253).

Wishart objected, the matter was not at issue, could not be tried (II: pp. 256-9, 353) but Judge Menendez tried the "final hearing" without power, without jurisdiction, in violation of the settled law, of *Leeds* v. *C. C. Chemical Corp.*, 280 So.2d 718, 719 (Fla. 3d DCA 1973) (IV: p. 613), citing *Ellis* v. *Ellis*, 242 So.2d 745 (Fla. 4th DCA 1971) (IV: p. 608), accord *Esch et al.* v. *Forester et al.*, 127 So. 336 (Fla. 1930) (IV: p. 693), and, Fla. R. Civ. P. 1.440 Setting Action for Trial (V: p. 952), *State* v. *Battle*, 302 So.2d 782, 783 (Fla. 3d DCA 1974) (IV: p. 618), and *Johnson et al.* v. *McKinnon*, 54 Fla. 221, 45 So. 23 (1907) (III: p. 513).

Judge Menendez, executed his "Final Judgement of Dissolution of Marriage", (II: pp. 211-218) On February 26, 1985, nunc pro tunc, December 4, 1984, rendered on the 25th day of April 1985 (III: p. 411).

By this void order Charles was excluded, he was after all only a step-grandfather while Bobbie was

given the following token visitation which remains the lawful order to this date:

> 13. The paternal grandmother, Bobbie Sue Wishart, shall be entitled to specific visitation with Tiffany for one full day every two months, to include overnight visitation. In the event the parties cannot agree on the date, it will be every odd-numbered month, commencing with January, 1985, on the third Sunday, beginning actually at 8:00 P.M. on the proceeding Saturday evening and ending Sunday evening at 8:00 P.M. This visitation will be in addition to any visitation she might enjoy during the period of time that the child is in the care, custody and control of the husband.

The Wisharts objected and appealed (II: pp. 304 -447, III: p. 412).

The Honorable John G. Hodges (Judge Hodges), during the pendancy of the appeal, entered two orders amending the Menendez judgement, to wit (1) "Adjudication of Contempt Order Regarding Temporary Change of Visitation and Notice of Hearing" dated February 25, 1986 (IV: pp. 755-756), and (2) "ORDER" dated the 16th day of April 1986, nunc pro tunc 3/22 /86 (IV: p. 757), on the presumption Judge Menendez' void Judgement is valid, leaving the Wisharts with the following visitation, to wit:

> Leslie M. Bates (Boggs) is adjudicated to be in willful contempt of Court for failure to appear and for failure to allow the visitations provided by the Final Judgement of Dissolution of Marriage. (IV: p. 755)

> 1. That the . . . [Wisharts] are granted visitation with . . . [Tiffany] . . . every Saturday commencing 22 March 1986 from 5:00 P.M. until 8: 00 P.M. . . . in the home of the . . . [Wisharts]. Said visitation shall continue until further order of Court. (IV: p. 757)

In lieu of granting Wisharts' petitions for the restoration of the status they were entitled to under Judge Steinberg's Order on the grounds Judge Menendez' Judgement was void ab initio, and while the appeal was pending, Judge Hodges, modified Judge Menendez' Judgement which granted "grandparents" visitation to the Wisharts under Section 61.13(2)(b)2.c, Fla. Stat. (Supp. 1978) on 25 Feb. 1986. (III: pp. 501).

Judge Hodges' Order of the 16th day of April 1986 further modified the visitation by moving it to the Wishart home due to Leslie's further acts of misconduct.

No appeal was taken from either Order and the principles of res judicata bar its amendment *Gray v. Gray*, 107 So.2d 261 (Fla. 1926) (IV: p. 695), *Coleman v. Coleman*, 190 So.2d 332 (Fla. 1966) (IV: p. 606), *Ferrell v. Ruege*, 397 So.2d 723 (Fla. 1st DCA 1981) (V: p. 970), *In The Interest of K. S. K., A Minor Child*, 294 So.2d 50, 51 (Fla. 1st DCA 1974) (IV-614), the order stands, inviolate, subject only to the reversal of Judge Menendez' Judgement, which occured, or a subsequent evidentiary hearing showing changed circumstances, which neither Judge Taylor's hearing nor any other accomplished.

On April 2, 1986, The Honorable Judges Scheb, Campbell and Sanderlin, the first panel, did in fact and deed, reverse and remand Judge Menendez'

Judgement in the case of *Wishart, et ux., v. Bates, et al.*, 487 So.2d 342 (Fla. 2d DCA 1986), reh den. May 1, 1986, mandate, May 16, 1986 (II: pp. 219-222).

The basis for Wisharts' appeal, the matter was not at issue since Judge Menendez put the matter to trial over Wisharts' objections, the mistrial was held in violation of Fla. R. Civ. P. 1.440 Setting Action for Trial (V: p. 952).

There were many other errors in Judge Menendez' "trial" and Judgement, (II: 304-342), but that was the specific question the Wisharts raised on appeal to reverse the "Final Judgement of Dissolution of Marriage", which succeeded in *Wishart, v. Bates*, (1986) *Id*, at 2, which grounds are explicitly set forth in the excerpts from the Wisharts' Initial Brief in that appeal (Vol. III: at pp. 586-594) to wit:

QUESTION I

WAS THE CAUSE AT ISSUE SO AS TO ALLOW THE COURT TO SET IT FOR PRETRIAL OR TRIAL PURSUANT TO RULE 1.440 OF THE FLORIDA RULES OF CIVIL PROCEDURE SO LONG AS THERE WAS INTER-ALIA A MOTION TO STRIKE WISHARTS' LAST PLEADING?

The opinion said:

> . . . [The Wisharts] appeal the denial of their petition . . . [to retain their] custody of their granddaughter.
>
> The Court having reviewed the record finds that . . . [the Wisharts] should have been afforded an opportunity to be heard and present evidence at the custody hearing.

> We therefore reverse and remand for further proceedings consistent herewith.

The very words " . . . should have been afforded an opportunity to be heard and present evidence . . . ." are the generic definition of due process of law in *Sheffey v. Futch*, 250 So.2d 907, (Fla. 4th DCA 1971) (IV: p. 610), contemplated in Article I, Decl. of Rts., § 9. Due Process, Fla. Const. (IV: p. 624), U. S. Const. amends. V and XIV, (IV: pp. 700-1), and such language alone shows the Wisharts were denied due process of law, which should be adequate to reverse Judge Menendez' void Judgement.

Since Judge Steinberg's order gave the temporary primary residency status to Bobbie, and with some adjustment that was her status going into the "final hearing", while the "step-grandfather" label was insufficient to deny Charles his standing to protect Tiffany, it is clear that the Wisharts petition was to retain custody (by what ever name you call it) and that since the first panel reversed Judge Menendez' Judgement, *Wishart v. Bates*, (1986), *Id.*, at 2, and treated the Wisharts equally, it must follow that both were entitled to the joint custody or primary residency status they had going into the trial.

Blacks Law Dictionary, 4th Ed. pg. 1482, REVERSE (IV: pg. 699) reads:

> **REVERSE.** To overthrow, vacate, set aside, make void, annul, repeal, or revoke, as to reverse, a judgement . . . or to change to the contrary or to a former condition.

Securities and Exchange Commission v. *C. M. Joiner Leasing Corp*, et al., 53 Fed.Supp. 714, 715 (U. S. Dist. Ct. N. D. Texas 1944) (III: p. 595) is in accord.

Johnson et al. v. *McKinnon*, 54 Fla. 221, 45 So. 23 (1907), *Id.*, at 12, (III: p. 513-518) holds when a court in the proper exercise of its jurisdiction violates a rule of procedure, then it has exceeded its jurisdiction (p. 26), the judgement is void, the parties must be restored to their status prior to the entry of the judgement, and on pg. 28 the court sets forth that law when it says:

> Now the rule is that, when a judgement or decree is reversed, the defendant is entitled to be restored to all things which he has lost thereby.

Neither 46 Am Jur 2d Judgements, D. Effect of Invalidity, § 49 Void judgements. (III: p. 519-521), nor 46 Am Jur 2d Judgements, D. Effect of Invalidity, § 50 Validation of judgements (III: p. 521-522), speaks well of orders issued without jurisdiction, to wit:

§ 49 Void Judgements.

> A void judgement is not entitled to, and is attended by none of the consequences of, a valid judgement. Indeed a void judgement need not be recognized by anyone, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any right be based thereon.
>
> Although it is not necessary to take steps to have a void judgement reversed or vacated, it is

> open to attack or impeachment in any proceeding, direct or collateral, and at any time or place, at least where the invalidity appears upon the face of the record. It is not entitled to enforcement and is ordinarily, no protection to those who seek to enforce it. All proceedings founded on the void judgement are themselves regarded as in valid and ineffective for any purpose.
>
> In short, a void judgement is regarded as a nullity, and the situation is the same as it would be if there were no judgement. It accordingly leaves the parties litigant in the same position they were in before trial.

Charles erroneously lost his custody over Tiffany by Judge Steinberg's Order, the courts have er- red in peceiving this as a grandparent issue whereas the Wisharts' standing was granted by Section 61.131, Fla. Stats. (1983), and the first panel recognized this by not distinguishing Charles from Bobbie.

Wishart lost their status granted by Judge Steinberg through operation of Judge Menendez void-*ab-initio* and now voided "Final Judgement of Dissolu- ion of Marriage", and having reversed it demand re- storation based on the reversal, or full custody based on the clean hands doctrine.

The Wisharts will always maintain that position, and their right to collaterlly attack it until they pre- vail under the law of our land.

The Honorable Peter J. T. Taylor (Judge Tay- lor) entered two orders, the first being entitled "Case Management Order" dated July 28, 1986 (IV: pp. 758-759).

This Order contains a key phrase when it reads in relevant part:

> . . .
>
> 8. That a hearing on the following motions in the following sequence shall be heard on 6 August 1986 from 1:30 PM to 3:00 PM:
>
> A. Motion for costs by Charles Wishart and Bobbie Sue Wishart;
>
> . . .
>
> H. Motion for Temporary Primary Residency of the Minor Child by Bobbie Sue Wishart;
>
> *This shall be a hearing of legal arguments only and not an evidentiary one.* (Emphasis added.)

Those costs were Wisharts appellate costs, were allowed by the reversal in *Wishart v. Bates*, (1986), *Id.* at 2, which costs, granted by Judge Taylor were denied by the second panel in *Bates v. Wishart*, (1987), *Id*, at 2, contrary to *Di Teodoro v. Lazy Dolphin Development Company*, 432 So.2d 625, 626 (Fla. 3d DCA 1983) (IV: pp. 622-3) which second panel construed Rule 9.400(a), Fla. R. App. P. (IV: p. 656), denying costs on the stated ground that:

> . . . [A]ppellees were not the prevailing parties in the prior appeal . . . . (II: p. 228 ¶ 4)

The petition for temporary primary residency, was the Wisharts seeking restoration, Judge Taylor made the petition solely a question of law, the heart of the *Bates v. Wishart*, (1987), *Id.* at 2, appeal.

Judge Taylor's second order is entitled "*Order Granting Motion For Appellate Costs*; Denying Motion Objecting To use of The Court Counsellors Office;

Denying Motion to Strike Writ of Habeas Corpus and Motion to Quash Writ of Habeas Corpus; Granting Moion To Disallow Service on Sunday; Reserving Ruling On Motion for Attorney's Fees, Motion to Tax Costs and Attorney's Fees; Order Regarding stipulation On Counseling Evaluation; Order Regarding Home Study; and *Order Denying Amended Motion For Order To Enforce Primary Residency*" (Emphasis added), dated the 22nd day of August 1986 (II: pp. 223-225), which with his first laid the predicate for the appeal and opinion of *Bates v. Wishart*, (1987), *Id.*, at 2.

Judge Taylor, in the second order, ruled in relevant part:

> 1. The court grants the motion for the Wisharts appellate costs pursuant to Rule 9.400(a)(1, 2, and 4) of the Rules of Appellate Procedure . . . .
>
> 6. The Court finds that the opinion of the Second District Court of Appeal dated the 2d day of April 1986, mandate issued the 16th day of April 1986, did not completely reverse the Final Judgement dated the 25th day of February 1985, nunc pro tunc, December, 1984, and therefore did not require a return to the temporary primary residency and/or custody status enjoyed by the WISHARTS immediately prior to the Final Judgement, and that the Wisharts are not entitled to the restoration of either temporary custody or primary residency in either or both of them, but only the opportunity to be heard on their Petition for Custody of their granddaughter.

It is a fact, the "Final Judgement of Dissolution of Marriage" was not "completely reversed", but would have been were the moral rationale of *King v.*

Daniel, 11 Fla. 91, 99 (1864-5) (III: p. 484); *Watson et al. v. State*, 194 So. 640, 642 (Fla. 1940) (IV: p. 706); *Randolph v. Randolph*, 1 So.2d 480, 481 (Fla. 1941) (III: p. 489); *State ex rel. Singleton v. Woodruff, Id.*, at 6; *Ryan v. Ryan, Id.*, at 11; *Johnson v. Johnson, Id*, at 11; Sections 61.001, 61.011, 61.13(3)(f) and 798.01, Fla. Stats. (1983) (III: pp. 483, 501 and IV: p. 629); Treaty of Amity, Settlement and Limits, Article V, between the United States of America and His Catholic Majesty, dated February 22, 1822 (III: p. 506-7); Paris Peace Treaty (1898), Article X, With the United States of America and the King of Spain, dated De-December 10, 1898 (VI: pp. 1-9); Treaty of Friendship and General Relations, between the United States and Spain, dated July 3, 1982 (III: p. 508-9); U. S. Const. Article VI, Treaties- Supreme Law of Land (V: p. 951); U. S. Const. amend. V, Due Process (IV:p. 700); and the U. S. Const. amend. XIV, Due Process (IV: p. 701-2); not have been abolished by fiat, taking our moral values with it, an perverting the exquisite language of Section 61.001, Purpose of Chapter, Fla. Stat. (1983) (III: p. 483), the import of Section 61.011, Dissolution in Chancery, Fla. Stat. (1983) (III: p. 483), to produce the automatic divorce found in *Riley v. Riley*, 271 So.2d 181 (Fla. 1st DCA 1972) (III: p. 470), the abolition of the clean hands doctrine which leaves Chancery impotent and our society on the verge of collapse, as we find documented in The Fla. Bar Jour. Vol. LXI, No. 10, November 1987, page 11, article entitled "Family Law Judicial System, Indictment From Within", (III: p. 464), for with no ethical value system to adhere to there is no law, for law is the embodiment of our law, and without the Christian Ethic we find anarchy and tyranny.

The Wisharts of course had no standing to contest the dissolution portion of the litigation, unless as guardians of Tiffany for they are all she has, but

they certainly had standing to contest their claim to keep that custody, guardianship, and/or temporary primary residency status that gave them the power to protect Tiffany from Leslie's medical neglect of Tiffany (II: pp. 201-210), and to provide her with a safe, stable and moral home, which status they never lawfully lost, but they have lost her.

What then may me deduce was the true rationale, the motive of Judge Taylor's Orders?

In December 1983, having lost Tiffany without an evidentiary hearing (I: pp. 23-24, 31-32, 34-51, 52-76, 88-89, and 96-121, III: pp. 431 ls. 16-19, & l. 24) the Wisharts, could not get one in time to stop the scheduled surgery, were compelled to go to extraordinary means (I: pp. 135-198, II: p. 220) to prevent what was known to them to be unnecessary surgery (I: pp. 135-198, II: pp. 203-210).

WISHART knew what had been diagnosed as a chronic medical problem was in fact a chronic medical neglect problem (II: pp. 204, 5), Leslie would not take Tiffany to the doctor nor give prescribed medicines, not even after the Wisharts took her.

Judge Rawlins, who became quite angry at Charles, made a vendetta of the matter after Judge Steinberg gave Tiffany to Bobbie (II: pp. 201-2).

He retried the matter in the Hillsborough County lunch room by gossip.

On August 7, 1987, Judges Ryder, Threadgill and Patterson, the 2d DCA panel, entered the opinion of *Bates v. Wishart*, (1987), *Id.*.

On the 8th day of September 1988, The Supreme Court entered its opinion in the case of *Wishart v. Bates*, (1988), *Id.*, and remanding the case to the present court.

The Supreme Court, ignored, or rather avoided the above facts and applicable law as would at least return TIFFANY to the WISHARTS, if not expell Leslie by operation by Chancery of the clean hands doctrine pursuant to *P_____ D_____ v. C_____ S_____*, 304 S.W.2d 437, 444 (Mo. Springfield C.A. 1965) (IV: p. 723), which holds that fraud and deceit makes a person unfit to have a child, but the Supreme Court reversed on the grounds that Section 61.13(2)(b)2.c, Fla. Stats. (Supp. 1978), allowed what the second panel disallowed, grandparent visitation, chiding both the second panel and the WISHARTS for not being aware of that change in the law.

In doing so, we find both the second panel of the Second District Court of Appeal and the Supreme Court abusing their discretion, as the scribes and pharisees had in The Holy Bible, K.J.V., Matt. 23: 23-24:

> 23 Woe unto you scribes and Pharisees, hypocrites! for ye pay tithe of mint and anise and cummin, and have omitted the weightier *matters* of the law, judgement, mercy, and faith: these ought you to have done, and not to leave the other undone.
>
> 24 *Ye* blind guides, which strain at a gnat, and swallow a camel.

Here we have an anomaly, the Supreme Court upheld, not Judge Hodges' visitation, which was ostensibly legal, but subordinate to Judge Steinberg's

Order, at least after the first panels opinion came down, but rather Judge Taylor's void visitation order which neither Leslie nor the Wisharts honor since there was no hearing.

Leslie appealed upon this law before the second panel of the Second District Court of Appeal, and The Florida Supreme Court, but it must be noted, only after she opposed Charles when he first raised it before JUDGE Taylor, for Judge Taylor could neither grant, nor in this case modify the Wisharts visitation without an evidentiary hearing showing changed circumstances, for his first order specifically prohibited such a proceeding.

Of course as always we have Leslie's deception by her concealment from the court the fact of the existence of Bobbie's visitation in Judge Menendez' Judgement, and the modifications by Judge Hodges granting the Wisharts visitation.

On the 17th day of December 1987 The Honorable Vernon W. Evans, Jr, (Judge V. Evans) issued an orentitled "Order Granting Motion For Involuntary Dis-Dismissal Of The Wishart Counter-claim For Custody of Tiffany Bates". (V: pp. 925-7)

Judge V. Evans' order was based upon the finding by Judge Menendez that Leslie was fit to have the care custody and control . . . [of Tiffany . . . .]

It should be noted that it is nearly imposible to prove anyone unfit when the social services have developed a position contrary to our morals, that:

> We cannot make moral judgements, that would be the imposition of religion on the person we are investigating, in violation of the separation of

Church and State, so a woman can sleep with 5 men at the same time and still be fit to have her child.

With no moral values under our law, no yardstick to measure conduct, we have the root and result of the tyranny in this case, the politicizing of the Courts and the Bar, for Blacks Law Dictionary, 4th Ed. pg. 1689 (IV: p. 598), defines tyranny as:

> **TYRANNY.** Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, either vested constitutionally in one ruler, or usurped by him by breaking down the division and distribution of governmetal powers.

The trial was flawed because for over a year the Wisharts had been cut off from not only their lawful custody, but also their lawful visitation, for they have been denied that visitation since Saturday October 18, 1986, not by denying it, but rather by refusing to compel LESLIE to obey the valid orders, or to punish LESLIE'S contempts of valid orders.

Without the opportunity to observe Tiffany, the Wisharts could not gather the fresh evidence to show Tiffany was still being abused by Leslie.

It is the equivalent of staking a person to the ground, going over the hill, and later proving they did not see Tiffany abused and therefore have no fresh evidence since the Courts made it difficult if not imposible to gather.

The Involuntary Judgement is flawed, but rather it is based upon a lie (V: pp. 928-941), the lie developed in the courthouse coffee shop, the essence of which was that when *Wishart v. Bates*, (1986), *Id.*, came

down the judges deliberately misconstrued the opinion to mean the Wisharts had told the first panel they had not had a hearing, so a hearing is what the Wisharts will be given.

The appeal was based upon the rule violation, which required the judgement to be reversed.

But, no one defended the Wisharts in the county court house lunch room, since their friends were honest, would not participate in the discussions, or the subject was changed whey they came into the room.

The rest followed a false conclusion, to deny the Wisharts the fruit of their victory, the plot was to uphold Judge Menendez' reversed Judgement as valid, Leslie fit, and the erroneous conclusion was that the Wisharts would only be allowed a hearing since it was imputed that they had said they had never had one while Leslie got all of the benefits of the Judgement including the voided finding that she was fit.

Section 61.131, Florida Statutes refutes that conclusion since Bobbie had primary residency when the final hearing was held, and had she lost it without a hearing, as the lie implies, that statute would have been invoked as it had been earlier as the grounds for the first panels reversal in *Wishart v. Bates*, (1986), *Id*, at 2.

Judge V. Evans Involuntary Judgement reflects this lie brought to fruition, Wishart had in fact lied to the first panel, saying they had not had a hearing, and now it was obvious to Judge V. Evans that they had lied for there were many exhibits stamped by Judge Menendez in the record of the December 1984 trial (IV: 737-751), showing the Wisharts had been heard and had presented evidence.

But the Wisharts had not lied, their appeal was based upon the violation of Rule 1.440, Fla. R. App. P., and there could be no trial with unsettled pleadings.

The Wisharts, putting forth this defense, filed their "Motion for New Trial and Rehearing of the Order by the Honorable Vernon W. Evans, Jr., Dated the 14th Day of December 1987 and Entitled 'Order Granting Motion For Involuntary Dismissal of the Wishart Counter-Claim for Custody of Tiffany Bates' ". (V: pp. 928-941)

That motion clarified *inter-alia* the fact of the mistrial and the issues before the first panel of the 2d District Court of Appeal. (III: pp. 586-594 & IV: pp. 737-751)

Confronted with the fact the Opinion reversing Judge Menendez' Judgement, for violation of rule 1.440, JUDGE V. EVANS recanted the substance of his first order on the 16th day of February 1988, by an order entitled "Order Denying Wisharts' Motion For New Trial And For Rehearing, And Denying Bates Motion For Award Of Attorney's Fees" (V: p. 942), which upheld the involuntary dismissal without explanation, and in spite of 4 doctors recommendations in the Wisharts' favor. (II: pp. 203-211)

This is a highly politicized case, in the Court lunch room, where politics has no place, and Tiffany without the Wisharts is a victim, the truth is concealed by the abuses of due process of law, and there is no one to champion her but the Wisharts.

THE QUESTION IS SUBSTANTIAL

In *State ex. rel. Singleton v. Woodruff*, 13 So.2d 704 at page 705, (Fla. 1943), *Id.*, at 6, the Supreme Court of Florida stated what was then unquestioned:

> Every system of law rests on a corresponding system of ethics that directs its course. The last-cited cases [*Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244; *Davis v. Beason*, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637; and *Knowles v. United States*, 8 Cir., 170 F. 409] point this precept. We are committed to a free exercise of religious opinion but since our system of law rests on Christian ethics one would not be permitted to set up a harem and practice polygamy in Florida under the guise of religious freedom because polygamy is contrary to approved moral standards. If our law were predicated on Mohammedan ethics the converse would be true. If it were predicated on pagan ethics, I could sell my child as a slave and if predicated on still another system and I belonged to the sect known as Dukhoborrs, I would be permitted to traverse the highways nude under the guise of religion, but not so in our country because our system of moral teaching raises a different standard that the law must conform to.
>
> The reason the Bill of Rights immunized religion and the press from governmental interference is not far to seek. Sections five and Thirteen, Declaration of Rights, Constitution of Florida, merely reinforced the Federal immunization of these liberties. The authors of the Bill of Rights descended from ancestors who had been persucuted and condemned to rot in jail for indulging religious and secular beliefs. It took them a thousand years to wrest these liberties from arbi-

trary kings, hence the inhibition against any attempt to shackle the conscience. A liberated conscience is as essential to a robust democracy as blood is to the human body. Enslave the conscience and democracy will perish as certainly as the body will perish when the blood ceases to circirculate. The church, the press, and the assembly were set apart by the Bill of Rights to educate the mass conscience and give wings to public opinion. But the church and the press were not liberated from governmental interference carte blanche; to their liberty was attached an obligation to the public on parity with the freedom given.

> Freedom of conscience is much older that the Declaration of Rights or the common law. Peter and John first invoked it when they were commanded by the high priest and the Roman rulers to speak and teach no more in the name of God. Acts. 4:17-21 . So the soil from which it springs like many otherr cherished precepts of the common law reach back to Hebrew origin and historically reveal why a free press, speech, and religion are in a preferred class, protected by the State and Federal Constitutions and immunized from charge by the State.

The Wisharts in this case are Christians, Charles is a minister, a missionary, and opposed to the unlawful denigration of our common ground, the Christian Ethical values which made America free, and the loss of which always has produced anarchy and tyranny.

Clearly, the duty of the Courts is manifest, by their own stated decisions.

Since The Florida Bar Journal, Vol. LX, No. 8, dated Sept. 8. 1986, article at page 448, entitled *Family Law Judicial System, Indictment From Within*, has documented what the Wisharts both personally and professionally endured, that it is imposible to prove a person unfit, or to function as a defense attorney in such an arbitrary, value neutral system, all the Wisharts need say is that more administration and specialization is not the answer, the restoration of the Christian values is, and without that, our society is doomed to go the way of Rome and other nations that abandoned their moral values.

CONCLUSION

Charles cannot defend Tiffany, nor marriage in a system that has no values, for the same reason, the Wisharts have been cut off, contrary to law, from their duty to Tiffany.

This Court must exercise its appellate jurisdiction, to compel the State Courts to adhere to the Christian ethical system, and to restore as a result, Tiffany to the Wisharts.

Respectfully submitted,

Charles F. Wishart

CHARLES F. WISHART, ESQUIRE
FLORIDA BAR. NO. 095782

Bobbie S. Wishart

BOBBIE SUE WISHART, PRO SE
410 West Bloomingdale
Brandon, Florida 33511-7403

APPENDIX A
SUPREME COURT OF FLORIDA

No. 71,370

BOBBIE SUE WISHART, ET AL, Petitioners,

vs.

LESLIE M. BATES (BOGGS), ET AL., Respondents.

[September 8, 1988]

We have for our review Bates v. Wishart, 512 So. 2d. 977 (Fla. 2d DCA 1987), which directly and expressly conflicts with decisions of other district courts on the issue of granting visitation rights to grandparents. See Putnal v. Putnal, 392 So.2d 613 (Fla. 5th DCA 1981); Whitehead v. Hewett, 380 So.2d 492 (Fla. 1st DCA), dismissed, 385 So.2d 761 (Fla. 1980). We have jurisdiction. Art. V, § (3)(b)(3), Fla. Const. We quash that portion of the decision below which holds the trial court erred in granting visitation to the petitioners.

The following facts are revealed in the decision of the district court below:

> In 1983, appellant, Leslie M. Bates (Boggs), petitioned for a divorce alleging that her marriage to Randy Bates was irretrievably broken and sought custody of the parties' only child, Tiffany Michelle Bates. Appellant additionally sought a court order requiring the return of the child to her custody. She alleged that her husband had removed the child from their marital home and delivered the child to one Charles Wishart (the step-grandfather of the

> child) and Bobbie Sue Wishart (a grandmother of the child).
>
> The Wisharts, appellants here, were joined as necessary party defendants in the child custody matter pursuant to sections 61.1306 and 61.131, Florida Statutes (1983).
>
> . . .
>
> On February 26, 1985, a different trial judge entered a final judgement holding that the Bates' marriage was irretrievably broken and granted shared parental responsibility to the parents. Appellant was given primary residence of the child. The Wisharts appealed the final judgement. The natural father did not contest the order of the court below.

512 So.2d at 978. After the district court remanded with directions to afford the Wisharts an opportunity to be heard and present evidence, Wishart v. Bates, 487 So.2d 342 (Fla. 2d DCA 1986), the trial judge awarded the Wisharts visitation rights with the child on every other Saturday. 512 So.2d at 979.

On appeal, the district court held that the trial court erred in granting visitation rights to the Wisharts because " '[a]n order granting visitation rights to a non-parent of a child whose custody has been awarded to a fit parent is unjustified and unenforceable.'" Id. (quoting Sheehy v. Sheehy, 325 So.2d 12 (Fla. 2d DCA 1975)). In support of its holding, the district court also relied on Tamargo v. Tamargo, 348 So.2d 1163 (Fla. 2d DCA 1977), and Rodriguez, 295 So.2d 328 (Fla. 3d DCA 1974). These decisions, however, were issued prior to the effective date of section 61.

13(2)(b), Florida Statutes (Supp. 1978), which provides in relevant part: "The court may award the grandparents visitation rights of a minor children [sic] if it is deemed by the court to be in the child's best interest." The existence of this statute was apparently overlooked by the parties and the district court.

Accordingly, the district court below erred in holding that the trial court could not grant visitation to the Wisharts and we quash that portion of the decision below. We remand to the district court for proceedings consistent with this opinion. Because section 61.131(2)(b) provides that an award of visitation rights to a grandparent may be made by the trial court if it is deemed to be in the child's best interests, the only issue before the district court on remand will be whether the trial court abused its discretion in determining that awarding visitation to the Wisharts was in the child's best interest. See Dinkle v. Dinkle, 322 So.2d 22 (Fla. 1975) (When the trial court, in a custody proceeding, makes a determination on the basis of the best interests of the child, the appellate court should not reverse absent a showing of abuse of discretion.).

It is so ordered.

OVERTON, McDONALD, SHAW, BARKETT, and KOGAN, JJ., Concur, GRIMES, J. Did not participate in this case.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Class of Constitutional Officers

Second District - Case No. 86-2408

Charles F. Wishart, Brandon, Florida,

for petitioners

Leslie M. Bates (Boggs), in proper person, Seffner, Florida

for respondents [sic]

APPENDIX B

SUPREME COURT OF FLORIDA

TUESDAY, NOVEMBER 8, 1988

BOBBIE SUE WISHART, et al.,	*	
	*	
Petitioners,	*	CASE NO. 71,370
	*	
v.	*	DISTRICT COURT
	*	OF APPEAL,
LESLIE M. BATES (BOGGS),	*	2D DISTRICT -
et al.,	*	NO. 86-2408
	*	
Respondents.	*	
	*	

* * * * * * * * * * * * * * * * *

Upon consideration of the Motion for Rehearing and Clarification filed in the above cause by petitioners, and response thereto,

IT IS ORDERED that said motion be and the same is hereby denied.

A true Copy TC

TEST:

(Seal)

/s/
Sid J. White
Clerk, Supreme Court

CC: Hon. William A. Haddad, Clerk
Hon. Peter J. T. Taylor, Judge.
Hon. Richard L. Ake, Clerk
Charles F. Wishart, Esquire
Ms. Bobbie Sue Wishart
Ms. Leslie M. Bates (Boggs)

APPENDIX C

CONSTITUTION OF THE UNITED STATES

ARTICLE VI.

This Constitution and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT I.

Congress shall make no law . . . prohibiting the free exercise . . . [of religion] . . . .

AMENDMENT V.

No person . . . shall be deprived of life, liberty, or property, without due process of law . . . .

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

APPENDIX D

TREATIES OF THE UNITED STATES

TREATY OF AMITY, SETTLEMENT AND LIMITS

ARTICLE V

The inhabitants of . . . [inter-alia Florida] shall be secured in the free exercise of their religion, without any restriction . . . .

With the United States of America and his Catholic Majesty, dated February 22, 1822.

PARIS PEACE TREATY (1898)

ARTICLE X

The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

With the United States of America and the King of Spain, dated December 10, 1898.

TREATY OF FRIENDSHIP AND GENERAL RELATIONS

ARTICLE IV

The citizens or subjects of the two High Contracting Parties shall enjoy in the territories of the other the right to exercise their worship . . . subject to the Constitution, Laws and Regulations of the respective countries.

With the United States and Spain, dated July 3, 1902.

APPENDIX E

CONSTITUTION OF THE STATE OF FLORIDA

DECLARATION OF RIGHTS

SECTION 1. Political Power,—All political power is inherent in the people. The ennuciation herein of certain rights shall not be construed to deny or impair others retained by the people.

SECTION 2. Basic Rights.—All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; . . . No person shall be deprived of any right because of . . . religion . . . .

SECTION 3. Religious freedom.—There shall be no law . . . prohibiting of penalizing the free execise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety . . . .

SECTION 9. Due Process.—No person shall be deprived of life, liberty, or property without due process of law . . . .

SECTION 21. Access to Courts.—The courts shall be open to every persor or redress of any injury, and justice shall be aministered without sale, denial, or delay.

ARTICLE V

SECTION 3, **Supreme court,**—

. . .

(b) JURISDICTION.—The Supreme Court:

. . .

(3) May review any decision of a district court of appeal that expressly . . . affects a class of constitutional officers, or that expressly and directly conflicts

with a decision of another district court of appeal or of the supreme court on the same question of law.

. . .

Section 15. **Attorneys; admission and discipline.** —The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

IN THE SUPREME COURT
STATE OF FLORIDA

BOBBIE SUE WISHART, and

CHARLES F. WISHART,

Appellees,
Cross-Appellants,
and Petitioners,

v.

LESLIE M. BATES (BOGGS),

Appellant, Cross-Appellee,
Respondent.

v.

RANDALL A BATES,

Cross-Appellee, Respondent.

CASE NO. 71,370

2d DCA CASE
NO. 86-2408

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

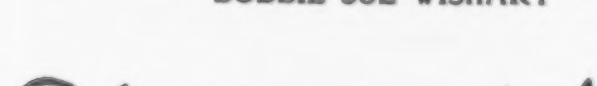
Notice is hereby given that Charles F. Wishart and his wife Bobbie S. Wishart, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgement of the Supreme Court of the State of Florida, favorably reversing in part, for the wrong reasons, while failing to reverse in total the opinion of *Bates v. Wishart*, 512 So.2d 977 (Fla. 2d DCA 1986), thereby failing to ratify and enforce *Wishart v. Bates*, 487 So.2d 342 (Fla. 2d DCA 1987), and failing to address certain other issues raised by CHARLES, a State Constitutional Officer,

the opinion being entered on the 8th day of September 1988, and rendered on the 8th day of November 1988.

This appeal is taken pursuant to 28 U.S.C. § 1257(1).

Respectfully submitted,

BOBBIE SUE WISHART



CHARLES F. WISHART
Attorney at Law
410 West Bloomingdale
Brandon, Florida 33511

Supreme Court, U.S.
FILED
FEB 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1340

IN THE

Supreme Court of the United States

OCTOBER TERM 1988

CHARLES F. WISHART,
and BOBBIE S. WISHART,
Appellants,
vs.
LESLIE M. BATES,
and, RANDALL A. BATES,
Appellees,

APPEAL FROM THE SUPREME COURT
OF THE STATE OF FLORIDA

SUPPLEMENTAL APPENDIX TO JURISDICTIONAL BRIEF

CHARLES F. WISHART, Esquire,
Attorney at Law,
and,
BOBBIE S. WISHART, his wife,
410 West Bloomingdale
Brandon, Florida 33511-7402

Phone: (813) 685-1240

Appellants appear pro se.

No. 88-1340

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Brandon, Florida 33511-7402

Phone: (813) 685-1240

Appellants appear pro se.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

LESLIE M. BATES (BOGGS)

Case No.86-2408

Appellant/Cross-Appellee,

v.

BOBBIE SUE WISHART and CHARLES F. WISHART,
Appellees/Cross-Appellants.

Opinion filed August 7, 1987.

Appeal from nonfinal order
of the Circuit Court for Hillsborough County
Peter J. T. Taylor, Judge.

Appellant, Pro se.

Charles F. Wishart, Brandon,
for Appellees/Cross-Appellants.

Ryder, Acting Chief Judge.

In 1983, appellant, Leslie M. Bates (Boggs), petitioned for a divorce alleging that her marriage to Randy Bates was irretrievably broken and sought custody of the parties' only child, Tiffany Michelle Bates. Appellant additionally sought a court order requiring the return of the child to her custody. She alleged that her husband had removed the child from their marital home and delivered the child to one Charles Wishart (the step-grandfather of the child) and Bobbie Sue Wishart (a grandmother of the child). The Wisharts, appellees here, were joined as necessary party defendants in the child custody matter pursuant to sections 61.1306 and 61.131

Florida Statutes (1983).

On December 28, 1983, the trial court ordered that the temporary residence of the minor child be with Bobbie Sue Wishart, the paternal grandparent, every Monday through Friday. Appellant was to have the child on weekends.

On February 26, 1985, a different trial judge entered a final judgement holding that the Bates' marriage was irretrievably broken and granted shared parental responsibility to the parents. Appellant was given primary residency of the child. The Wisharts appealed the final judgement. The natural father did not contest the order of the court below.

A panel of this court held that the Wisharts, as grandparents, "should have been afforded an opportunity to be heard and present evidence at the custody hearing." *Wishart v. Bates*, 487 So.2d 342 (Fla. 2d DCA 1986). The panel reversed and remanded for further proceedings consistent with the opinion. The Wisharts subsequently filed a motion to enforce mandate arguing that the decision made void the trial court's award of primary custody to appellant, and that the child must be returned to Bobbie Sue Wishart's temporary custody pursuant to the December 28, 1983 order. We denied the motion to enforce mandate.

Since the panel's denial of the Wisharts' motion to enforce mandate, step-grandfather Wishart has filed numerous motions; so numerous, we believe the harried, but able trial judge must be reeling from that malady so aptly described in *Dubowitz v. Century Village East, Inc.*, 381 So.2d 252, 253 (Fla. 4th DCA 1979). He had not petitioned for a custody hearing. On June 30, 1986, the trial court held a case manage-

ment hearing. At that hearing, the trial judge granted the Wisharts appellate costs pursuant to Florida Rules of Appellate Procedure 9.400(a)(1)(2)(4). The trial judge ruled that the opinion of this court, to which we earlier alluded, did not "completely reverse the final judgement... and therefore did not require a return to the temporary primary and/or custody status enjoyed by the Wisharts immediately prior to the final judgement." The trial judge is imminently correct in that ruling. The trial judge, thereafter awarded the Wisharts visitation rights with the child on every other saturday. This timely appeal followed.

Appellant raises two points with up. First, the trial court erered in awarding appellees their appellate costs. Second, the court erred in granting appellees any visitation rights at all. Appelles raise one point on cross-appeal: the second district's opinion permitting the grandparents a hearing in the custody of the child rendered the prior trial court's order granting appellant custody void ab initio. We will deal with each in point of order.

Florida Rule of Appellate Procedure 9.400(a) provides that, "Costs shall be taxed in favor of the prevailing party unless the court orders otherwise . . . . Costs shall be taxed by the lower tribunal on motions served within 30 days after issuance of the mandate." Florida Rules of Appellate Procedure 9.400(c) provides that, "Review of orders rendered pursuant to this rule shall be by motion filed in the court within 30 days of rendition." The judgement awarding costs to appellees was entered on August 22, 1986. We have jurisdiction to review the Court's order because apppellant filed her notice of appeal within thirty days of the rendition of the judgement awarding appellant costs. The trial court erred in awarding appellees appellate costs. We reverse the trial court's or-

order awarding appellees appellate costs as we hold appellees were not the prevailing parties in the prior appeal. By returning the matter to the trial court in the prior appeal, we did not overturn the trial court's award of custody to to appellant. We merely granted the appellees an opportunity to be heard at a custody hearing. As was evidenced by our denial of appellees' motion to enforce mandate which had urged the return of temporary custody to appellees, custody was to remain with appellant.

As to appellant's second point, we observe that the trial court also erred in granting appellees visitation rights. "An order granting visitation rights to a nonparent of a child whose custody has been awarded to a fit parent is unjustified and unenforceable." *Sheehy v. Sheehy*, 325 So.2d 12 (Fla. 2d DCA 1975); *Tamargo v. Tamargo*, 348 So.2d 1163 (Fla. 2d 1977); *Rodriguez v. Rodriguez*, 295 So.2d 328 (Fla. 3d DCA 1974). Appellant has been found to be a fit parent.

Thus, we reverse and vacate the trial court's award of appellate costs as appellees were not the prevailing parties in the prior action. We also reverse and vacate the trial court's award of visitation rights to the appellees.

On cross-appeal appellees argue that the trial court erred by not finding that our opinion permitting the step-grandfather and grandmother a hearing on the custody of the child rendered the prior trial court's order granting appellant custody was void ab-initio. Appellees argue that because the prior order was void ab initio, appellees should be reinstated with the temporary custody of the child. As was previously discussed, we did not reverse the trial court's prior custody judgement. We merely granted the appellees an opportunity for a hearing in which to present evi-

dence as to the child's best interests with regard to her custody. Accordingly, we find no merit in the point on cross-appeal and affirm the trial judge's ruling thereon.

Reversed in part, affirmed in part.

READGILL, J and PATTERSON, DAVID F., Associate Judge, concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

CHARLES F. WISHART, and
BOBBIE SUE WISHART
Appellants, Case No. 85-1128

RANDALL A. BATES, and
LESLIE M. BATES (BOGGS)
Appellees.

Opinion filed April 2, 1986.

Appeal from the Circuit Court
for; Hillsborough County
Manuel Menendez, Judge.

No appearance for Appellees.

PER CURIUM.

Appellants appeal the denial of their petition for custody of their granddaughter.

The court having reviewed the record finds that appellants should have been afforded an opportunity to be heard and present evidence at the custody hearing.

We therefore reverse and remand for further proceedings consistent herewith.

SCHEB, A.C.J., and CAMPBELL and SANDERLIN, J.J., Concur.

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

MAY 1, 1986

CHARLES F. WISHART, and
BOBBIE SUE WISHART,

Case No. 85-1128

Appellants,

v.

RANDALL A. BATES and
LESLIE M. BATES

APPELLEES.

Counsel for appellees having filed a motion for rehearing in the above styled case, upon consideration, it is

ORDERED that said motion is hereby denied without prejudice to raise issue on remand to trial court.

A TRUE COPY
ATTEST:
/S/
CLERK DISTRICT COURT OF APPEAL
SECOND DISTRICT

cc: Lee Ellen Acevedo
Charles F. Wishart
Randall A. Bates

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OFTHE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY

FAMILY LAW DIVISION

IN RE: THE MARRIAGE OF

NO. 83-7250

LESLIE M. BATES, Petitioner/Wife and Counter-Respondent, DIV. "D"

and,

RANDALL A BATES, Respondent/Husband, and Cross-Respondent,

-- vs. --

CHARLES F. WISHART and BOBBIE SUE WISHART, Respondents, Cross-Petitioners and Counter-Petitioners.

FINAL JUDGEMENT OF DISSOLUTION OF MARRIAGE

THIS CAUSE Came on before this Court for a two day Final Hearing beginning on December 3, 1984. Present before the Court were the Wife, LESLIE M. BATES, and her attorney, PAUL M. TABIO, ESQ.; the Husband, RANDALL A. BATES, who appeared in proper person; the paternal grandmother, BOBBIE SUE WISHART; and the paternal step grandfather, CHARLES F. WISHART, ESQ., who also appeared as attorney of record for the WISHARTS. The Court, having heard the testimony of the parties and their various witnesses, having reviewed the numerous exhibits admitted in evidence, having heard argument of counsel, having examined the file and record herein, and being otherwise fully advised upon the premises,

finds as follows:

a) The Court has jurisdiction of the parties, the subject matter herein, and the minor child, TIFFANY BATES.

b) The Court finds the mariage between the Wife, LESLIE M. BATES, and the Husband, RANDALL A. BATES, is irretrievably broken and should be dissolved.

c) The Court, as requested by counsel, has taken judicial notice of numerous court files and records, both criminal and juvenile, referred to in the Pre--Trial Orders entered herein, as well as the case law cited by counsel.

d) As to the Court's Order to Show Cause directed to JERRY L. HEDRICK, M. D., the Court finds that he is not in willful contempt of this Court.

e) The Court also finds that CHARLES F. WISHART and BOBBIE SUE WISHART, are not in willful contempt of this Court.

f) The Court also finds that the Wife's Motion to Strike the Grandparents' Amended answer hsould be denied and instead treated as a denial of the allegations in the Affirmative Defenses filed by the Wisharts.

g) As to the personal property of the Husband and Wife , the Court finds that each should retain those items of personalty presently in his or her respective possession, including that certain 1978 Ford Mustang on which testimony was received.

h) Additionally, the Court finds that the Wife's

application for alimony, if not abandoned, should be denied.

i) The Court further finds that in respect to the joint debts incurred by the Husband and Wife during their marriage, which includes a hospital bill to Tampa General resulting from the birth of their child, that the parties are equally responsible for said obligations and each should therefore pay one-half of same.

j) In respect to attorney's fees and costs, the Court finds each party should bear their own.

k) The Court additionally finds that each of the parties herein desire the custody of the minor child, TIFFANY; Neither of the parties are unfit, nor have any of the parties abandoned the minor child. The natural parents of TIFFANY, who are LESLIE and RANDALL, have not relinquished their parental rights. The natural parents, accordingly, have a superior right to the custody of a child over any third parties provided same is in the best interest of the child. The best interest of the child has been the Court's primary concern throughout this cause. Based on the extensive testimony and evidence presented through the Final Hearing as well as testimony presented at previous heaings, the natural mother, LESLIE M. BATES, the natural father, RANDALL A. BATES, and the paternal grandmother and paternal step grandfather, BOBBIE SUE WISHART and CHARLES F. WISHART, are all fit and proper to have the care, custody and control; but it is the opinion of the Court that the best interest of the child, TIFFANY BATES, would be promoted by the parents being granted the shared parental responsibility in respect to the child. The primary residence of the child should be with her mother, LESLIE M. BATES,

and the secondary residence should be with her father, RANDALL A. BATES, with frequent and continuing contact afforded the non-residential parent as provided for hereinafter as well as contact with the WISHARTS.

l) The Court finds that the wife requires financial assistance toward the support of the minor child and the Husband has the ability to pay. The Wife's request for support arrearages should be denied because the paternal grandmother, BOBBIE SUE WISHART and the paternal step grandfather, CHARLES F. WISHART, have provided for the expenses of the child for the majority of time this cause has been in litigation.

It is therefore, upon consideration thereof,

ORDERED AND ADJUDGED as follows:

1. That this Court has jurisdiction of the parties; the subject matter herein and the minor child, TIFFANY BATES.

2. That the marriage between the Wife, LESLIE M. BATES, and the husband,RANDALL A, BATES, is irretrievable broken and the bonds of matrimony heretofore existing between them are hereby forever dissolved.

3. Than JERRY L. HEDRICK, M.D. is not found to be in willful contempt of this Court.

4. That BOBBIE SUE WISHART and CHARLES F. WISHART, are not found to be in willful contempt of this Court.

5. That the Wife's Motion to Strike the grandpar-

ent's Amended Answer be and the same is hereby denied and instead, it is treated as a denial of the allegations contained in the Affirmative Defenses filed by the WISHARTS.

6. The husband and wife are hereby declared to be the owner of those tems of personal property which are presently in his or her respective possession, including that certain 1978 Ford Mustang.

7. The Wife's application for alimony is hereby denied.

8. That the husband and Wife shall each pay one-half of the joint debts incurred during the marriage which includes a bill to Tampa General Hospital for the birth of their minor child, TIFFANY BATES.

9. Each party shall be responsible for their respective attorney's fees and costs incurred in this cause.

10. The shared parental responsibility in respect to the minor child, TIFFANY BATES, is hereby granted to the husband and wife. The primary residency of the child shall be with her mother, LESLIE M. BATES, and the secondary residence shall be with her father, RANDALL A. BATES, with frequent and continuing contact afforded the non-residential parent as provided for herein.

11. The husband, RANDALL A. BATES, shall pay to the wife, LESLIE M. BATES, as and for child support for the minor child of the parties, TIFFANY BATES, the sum of $40.00 per week; payable at the rate of $173.20 per month, together with the Clerk's handling fees, with payment to commence on December 21, 19-84 and continuing each and every month thereafter until such time as the child attains 18 years of age,

becomes self supporting, marries, dies or until further Order of thisCourt, whichever shall occur first. Further, each payment shall be made to the Clerk of this Court, Support Department, and shall be made in U.S. Currency, money orders, cashier's checks or certified check. Money orders and checks shall be made payable to the Clerk of the Circuit Court, and if mailed, shall be addressed as follows: Support Department, Clerk of the Circuit Court, Post Office Box 1110, Tampa, Florida 33601. Each party shall notify the Support Department within five (5) days of any change of residence address.

It has been represented to the Court that the parties' present mailing addresses are:

LESLIE M. BATES
P.O. Box 4
Williams Road
Seffner, Florida 33584

RANDALL A BATES
410 West Bloomingdale
Brandon, Florida 33511

12. The Husband shall have visitation with the minor child on alternate week-ends from Friday at 5:30 P. M. until Sunday at 8:00 P.M., commencing with Friday, December 14, 1984 and on every other week-end thereafter. In addition, he shall have the right to visit with the child on two evenings per week. If the parties cannot agree on what days they are to be, they will be on Tuesdays and Thursdays from 5:30 P. M. until 8:30 P.M. Also, the Husband is required to provide prior notice to the Wife within 24 hours of said visitation, unless in the case of an emergency, should he intend not to exercise one of the evening visitations. Further, the wife shall notify the Husband of a specific place at the specified time to pick the child up if he does not notify the Wife that he does not intend to exercise said visitation.

The Husband shall have the minor child for Thanksgiving in odd numbered years from the Sunday preceeding Thanksgiving at 8:00 A.M. until the Sunday following Thanksgiving at 8:00 P.M. The Wife shall have the child for this same period in even numbered years.

The husband shall have custody of TIFFANY for seven days prior to Christmas Day at 8:00 A.M. until Christmas at 2:00 P.M. in odd numbered years. In even numbered years, he shall have custody of the child beginning at 2:00 P.M. Christmas Day for a seven day period, ending at 8:00 P.M. on the seventh day.

The husband shall have custody of TIFFANY from the Sunday preceeding Easter at 8:00 A.M. through Easter Sunday at 8:00 P.M. in even numbered years.

Commencing in 1985 and through 1988, the Husband shall have custody of TIFFANY for a period of four (4) weeks during the summer months. That will be the first two weeks in July and the first two weeks in August or as otherwise agreed to by the parties. The following two weeks, Mr. Bates shall have custody of TIFFANY for the last two weeks in June, the second and third week in July and the second and third week in August. Thereafter, Mr. Bates shall have custody of the child for eight continuous weeks during the summer months commencing with the week immediately after the conclusion of the public school year. Should for any reason the Public School Board decide to change the public school year, then said visitation shall begin the last week in June and last for eight continuous weeks.

In addition to the previous set-out visitation schedule, in odd numbered years, regardless how the sum-

mer visitation works out, Mr. Bates shall have the primary costody of TIFFANY on her birthday from 8:00 A.M. until 8:00 P.M. unless of course, she is designated to be with him at the time in the course of the summer vacation provided for hereinabove.

He shall also have the costody of the child every year as early as 8:00 A.M. until the following morning at 8:00 A.M., unless otherwise agrees to by the parties, on his birthday and on Father's Day, which is celebrated annually on the third Sunday in June.

13. The paternal grandmother, BOBBIE SUE WISHART, shall be entitled to specific visitation with TIFFANY for one full day every two months, to include overnight visitation. In the event the parties cannot agree on the date, it will be every odd-numbered month, commencing with January, 1985, on the third Sunday, beginning actually at 8:00 P.M. on the preceeding Saturday evening and ending at 8:00 P.M. This visitation will be in addition to any visitation she might enjoy during the period of time that the child is in the care, custody and control of the Husband.

14. In the event the parties or any of the parties hereto cannot resolve a conflict relating to the proper care, custody and control of TIFFANY, they are required to seek appropriate, competnt assistance, a resolution center, counselling or other professional person to assist the family. This should be followed to its conclusion prior to any party seeking further relief from the Court.

15. The Husband and Wife are required to provide each other with a telephone number where they can be reached for emergency purposes and to advise each other as to the residence address where the mi-

nor child will be residing. There are to be no telephone calls to each other, other to arrange or cancel visitation or in case of an emergency.

The wife is required to keep the Husband advised as to Tiffany's health, specifically any medical condition she may be having and to advise the Husband within twenty-four hours of any and all doctors' visits or any and all prescriptions that the child is taking or in the event of an emergency. Additionally, the wife will inform the Husband of any contemplated surgery. This will apply to the husband during the time that he has custody of the child as well as to the grandmother when she has the child for visitation as provided for herein, should such an emergency arise.

Further, each parent is required to provide complete and total access to the medical records of TIFFANY to the other, including the signing of releases with regard to the doctors and dentists treating the child to release such records and information to the other parent.

16. If the parties can agree, one of them should obtain a medical insurance policy for the use and benefit of the minor child. All medical and dental expenses incurred by or on behalf of the minor child shall be equally borne by the parties on a fifty-fifty basis.

17. Neither party, including their parents, i.e., the child's grandparents, shall voice any criticism of the other in the presence of the child nor will any party force or encourage the child to take sides in any conflict arising between them. All parties concerned shall not do anything to interfere with the maintenance of a relationship of love and affection between the child and the other parent, nor shall any of the parties do anything to estrange the child from the o-

ther.

18. The child shall not be removed form (sic) the State of Florida without prior approval of this Court or without the written approval of the other parent. Neither parent nor any grandparent is allowed to remove the child from the State of Florida, either directly or through any third party, without prior Court approval or written permission of each parent; for more than a two-week period. In the event of any contemplated travel out of the State of Florida for two weeks with the child, the other parent, or course, will be notified as to the location of the child, the intended location and proposed method of travel.

19. Neither the parents or the WISHARTS shall use any controlled substances unless said substances are pursuant to lawful prescription in the presence of the minor child or during that period of time when the child is residing with them. Failure to comply with this may subject the party failing to comply with this provision to contempt of Court.

Neither parent shall, while TIFFANY is residing with them, cohabit with an unrelated member of the opposite sex.

20. The child is required to keep the Doctor's appointment presently scheduled for December 28, 1984.

21. The Court retains jurisdiction of the parties and this cause to enforce the terms and provisions hereof.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida this 26th day of February, 1985, nunc pro tunc, December 4, 1984.

Manuel Menendez, Jr.
CIRCUIT JUDGE

IN THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

FAMILY LAW DIVISION

IN RE: The Marriage of

RANDALL A. BATES, Husband,
Respondent and Cross-Respondent,

CASE NO. 83-7250

and

DIVISION D

CHARLES F. WISHART and BOBBIE SUE WISHART, Paternal Grandparents,
Respondents, Cross-Petitioners
and Counter-Petitioners.

ORDER REGARDING TEMPORARY PRIMARY RESIDENCY OF MINOR CHILD AND TEMPORARY VISITATION, AND ORDER CONTINUING THE FORMER ORDER TO SHOW CAUSE

This matter came before the Honorable Ralph Steinberg on December 20, 1983, in the nature of an emergency hearing at the request of the assigned Judge, the Honorable Robert W. Rawlins, Jr., and upon Judge Rawlins' Order dated December 15, 1983, denominated respectively "Order Placing Child Temporarily with the Department of Health and Rehabilitative Sevices for the purpose of Examination and Temporary Care" and "Orderr Concerning Temporary Custody of Minor Child and Order to Show Cause". All parties were present; in addition, the Wife was represented by John W. Hoft, Jr., Esquire, and the Husband by Thomas R. Fay, Esquire. The Court heard testimony and argument of counsel, and was otherwise fully advised in the premises.

It is, therefore,

ORDERED AND ADJUDGED:

1. That the temporary primary residency of the minor child, TIFFANY MICHELLE BATES, shall be with the paternal grandmother, BOBBIE SUE WISHART, every Monday at 8:00 A.M. until the following Friday at 6:00 P.M.

2. That the Wife, LESLIE M. BATES, shall pick up the child at the residence of BOBBIE SUE WISHART each Friday at 6:00 P.M. and return the child to the primary residence at 8:00 A.M. the following Monday and shall pick up the child at 6:00 P.M. each Tuesday and return the child to the primary residence the following Wednesday at 8:00 A.M.

3. That the Husband, RANDALL A. BATES, and Wife, LESLIE M. Bates, shall have liberal and free access to the child at all times upon reasonable notice.

4. That the Wife shall deliver the minor child to the residence of the paternal grandmother on Christmas Day, December 25, 1983, at 10:00 A.M. and shall pick the child up at 12:00 noon that same day.

5. That the treating pediatricians for the minor child, TIFFANY MICHELLE BATES, to-wit, Doctors Gerald R. Hough and Patricia N. Jeansonne are hereby requested to consult with Dr. Thomas R. Griewe, 2250 W. Buffalo Avenue, Tampa, Florida, regarding the care and treatment of said minor child.

6. That the Paternal Grandmother, BOBBIE SUE WISHART, shall have the authority and responsibility

regarding necessary medical care and treatment for the minor child, TIFFANY MICHELLE BATES, during any time that the residence of the minor child be with her.

7. That a hearing on the Order to Show Cause dated December 15, 1983, previously entered by Judge Rawlins shall be and the same is hereby CONTINUED for determination on the merits before Judge Rawlins or his successor as he may see fit.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, on this 28th day of December 1983.

Ralph Steinberg

Copies to: CIRCUIT JUDGE

Randall A. Bates

Leslie M. Bates
c/0 John W. Hoft, Jr., Esquire

Charles F. and Bobbie Sue Wishart

Thomas R. Fay, Esquire

John W. Hoft, Jr., Esquire

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY

FAMILY LAW DIV.

IN RE: THE MARRIAGE OF

No. 83-7250

LESLIE M. BATES (BOGGS), wife/ petitioner and counter-respondent

DIVISION "D"

and

RANDALL A. BATES, Husband/respondent, Counter-petitioner and cross-respondent

and

CHARLES F. WISHART, Cross & Counter-petitioner and BOBBIE SUE WISHART, Cross & Counter-petitioner

ORDER GRANTING MOTION FOR INVOLUNTARY DISMISSAL OF THE WISHART COUNTER-CLAIM FOR CUSTODY OF TIFFANY BATES

At the conclusion of the case presented by CHARLES F. WISHART and BOBBIE SUE WISHART, the step-grandparent and natural grandparent respectively, on their counter-claim seeking permanent custody of their granddaughter, Tiffany Bates, and considering the evidence and all reasonable inferences which could be drawn from the evidence in a light most favorable to the counterclaimants, the court has concluded that the counter-claimants have shown no right to the relief sought and consequentiy the counter-defendant, LESLIE BATES', [natural mother of Tiffany Bates] motion for involuntary dismissal pursuant

to Rule 1.420 (b) of the Florida Rules of Civil Procedure should be granted.

Because of the extraordinary judicial history of this case beginning in 1983, the court wishes to make the following observations:

This marriage dissolution action between Leslie Bates and Randall Bates was commenced in 1983. The Wisharts were joined as parties in the original action because of their involvement in the custody of Tiffany Bates. On June 2, 1983 the Wisharts filed a counter-claim alleging that the natural parents were unfit to have custody of their own child and affirmatively sought to have custody granted to them. Leslie Bates, the natural mother, filed an answer to that counter-claim on September 21, 1983. Thereafter, a Pre-trial Order dated August 24, 1984, was entered by Judge Manuel Menendez, Jr., stating in paragraph 10(b) as follows:

> "Wisharts' request to grant custody of Tiffany to Wisharts and all testimony pertinent thereto shall be heard and considered by this Court at the Final Hearing in this cause." At the conclusion of that Final Hearing held before Judge Menendez in December, 1984, the court entered a Final Judgement which clearly recited that the court had considered the claims of everyone involved, including the Wisharts, as to the custody of Tiffany Bates and specifically found from the evidence presented that both the natural mother and the natural father were fit parents. Shared parental responsibility was awarded to the parents and the child was to have her primary physical residence with the mother, Leslie Bates. The finding of fitness of the natural parents necessarily determined the Wisharts' claim for cus-

tody against them because natural parents are entitled to custody of their own children unless they are found to be unfit. On April 25, 1985, Wisharts' motion for rehearing was denied. Thereafter the Wisharts took an appeal and the appellee, Leslie Bates, did not make an appearance before the Appellate Court.

On April 2, 1986, the Appellate Court rendered the following opinion:

"The appellants [WISHART] appeal the denial of their petition for custody of their granddaughter.

The court having reviewed the record finds that appellants should have been afforded an opportunity to be heard and present evidence at the custody hearing.

We therefore reverse and remand for further proceedings consistent herewith."

It is clear from this opinion that the Second District Court of Appeals was under the impression that Judge Menendez had not afforded the Wisharts a hearing on their counter-claim.

Upon remand the undersigned, as presiding judge of Family Law Division "D", went forward with another hearing on the WISHARTS' counter-claim. The court has held hearings on the Wisharts' counter-claim for five days on the following dates: June 23, June 24, September 15, September 16, and December 14, 1987. During the presentation of their case the Wish- arts repeatedly offered in evidence exhibits which had been earlier tendered to and received by Judge Menendez. The record reflects that the Wisharts offered and Judge Menendez

received in evidence on their behalf at least (19) photographic, other physical objects and documentary exhibits. Just for an example, Wisharts' Exhibit #4 received by this judge bore an evidence stamp by Judge Menendez indicating he had received the identical exhibit as Wisharts' Exhibit #17 baby's clothing). This is just one example of this matter. On more than one occasion during the five days of hearings conducted before the undersigned, it became apparent that the undersigned was hearing oral testimony which had also been presented to Judge Menendez for his consideration on the custody claims.

The record would seem to be clear that the Wisharts were in fact given an opportunity to be heard and to present evidence on their custody claim before Judge Menendez in 1984 and they have now had an additional five days of hearing in 1987 before the undersigned on the same claims.

It is, therefore,

ORDERED AND ADJUDGED, that the motion of the counter-defendant, LESLIE BATES, natural mother of the minor child, Tiffany Bates, for involuntary dismissal of the counter-claim for custody filed by CHARLES F. WISHART and BOBBIE SUE WISHART be and the same is hereby granted and said counter-claim is dismissed.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, this 17th day of December 1987, NUNC PRO TUNC December 14, 1987.

/S/

VERNON W. EVANS, JR., CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY

FAMILY LAW DIV.

IN RE: THE MARRIAGE OF

No. 83-7250

LESLIE M. BATES (BOGGS), wife/ petitioner and counter-respondent

DIVISION "D"

and

RANDALL A. BATES, Husband/respondent, Counter-petitioner and cross-respondent

and

CHARLES F. WISHART, Cross & Counter-petitioner and BOBBIE SUE WISHART, Cross & Counter-petitioner

MOTION FOR NEW TRIAL and REHEARING OF THE ORDER BY THE HONORABLE VERNON W. EVANS, Jr., DATED THE 14TH DAY OF DECEMBER 1987 AND ENTITLED "ORDER GRANTING MOTION FOR INVOLUNTARY DISMISSAL OF THE WISHART COUNTER-CLAIM FOR CUSTODY OF TIFFANY BATES"

Comes now Charles F. Wishart and Bobbie Sue Wishart his wife, (CHARLES, BOBBIE, the WISHARTS or WISHART) parties herein and files this their Motion for New Trial and Rehearing pursuant to **Rule 1.530, Fla. R. Civ. P.** and shows:

PARTIES:

1. The parties and their respective status are listed in the above styled caption which conforms to the caption used in the judgement in question herein.

2. Leslie M. Bates [Boggs] (LESLIE) and Randall A. Bates (RANDY) are the mother and father of Tiffany Michelle Bates (TIFFANY), the step, and natural granddaughter of CHARLES and BOBBIE respectively.

3. The WISHARTS were made necessary parties to the above styled cause pursuant to **§ 61.131, Florida Statutes (1983)** since (1) they had helped to raise TIFFANY for the first 6 months of her life, (2) when LESLIE left RANDY on the 11th day of May 1983, RANDY gave TIFFANY to the WISHARTS, his stepfather and mother respectively, for safe keeping since TIFFANY was once again sick, and in addition (3) RANDY gave the WISHARTS a letter of guardianship as contemplated by **§ 39.01(23), Florida Statutes (1977)** which granted them, legal custody so as to care for TIFFANY, which could not be modified save through a lawful hearing.

4. Additional data will be added as to status as required.

CITATIONS:

Citations shall be made to the prepared Appendix (Pages 1 to 361) accompanying this motion with cites then to the pages, paragraphs and lines as for example A: pg. 15, ¶ 7 line 1 which reads:

> The court having reviewed the record finds that appellants should have been afforded an op-

portunity to be heard and present evidence at the custody hearing.

5. To facilitate a complete answer to the Order in question, the entire order, including the style which was reproduced above, has been made a part of this motion, in relevent segments, with the paragraphs indented, single spaced and bolded for clarity. Turning therefore to the first paragraph we find.

At the conclusion of the case presented by CHARLES F. WISHART and BOBBIE SUE WISHART,

6. The WISHARTS deny that they had concluded their case.

7. While going through the motions they object to the trial being held at all.

8. First, RANDY was never made a part of the trial.

9. His participation came up before The Honorable Peter Taylor, Judge Evan's immediate predecessor, and Judge Taylor ruled that RANDY would be considered as an active party until further notice.

10. The procedures for removing RANDY pursuant to **Rules 1.250(b), 1.420b), and 1.090(d), Fla. R. Civ. P.** have not been invoked.

11. Judge Evans and LESLIE have ignored him, over WISHARTS objections (A: pg. 209, ¶¶ E. and F.), and although RANDY has many interests at stake concerning the outcome of this litigation yet RANDY has never been served by either LESLIE or Judge Evans as an examination of the record including the present

order will show, a clear violation of **Rule 1.080(a) and (h), Fla. R. Civ. P.**

12. In addition, this matter was set for trial by Judge Evans, without compliance with the provisions of **Rule 1.440, Fla. R. Civ. P.** (A: pg. 208 ¶ 27(B)).

13. Judge Evans unilaterally set the matter for trial.

14. Had the procedure been followed, WISHART would have responded by showing the following facts as should prevent the trial being forced upon them:

(a) The nature of the WISHARTS' concern for TIFFANY was the medical (A: pg. 283, last line of ¶ 4) and moral neglect of TIFFANY by her mother LESLIE.

(b) WISHART started with full custody, which was modified by the Honorable Ralph Steinberg, from that to primary residency (in BOBBIE A: pg. 1 ¶ 1. to pg. 2 ¶ 2. and Cf. pg. 2 ¶¶ 5 and 6) which had allowed them to care for her, have a beneficial effect on TIFFANY'S health in spite of LESLIE'S poor care, and as well they could gather fresh evidence of the ongoing pattern of neglect (A: pgs. 302 to 313).

(c) This was illegally modified by The Honorable Manuel Menendez, Jr., who put the matter to trial in violation of **Rule 1.440, Fla. R. Civ. P.** in that there was a motion to strike (A: pgs. 4, ¶ f; pgs. 5 and 6 ¶ 5; and, pgs. 94, 95 and 135) WISHARTS' last pleading (A: pgs. 87, ¶ 3, and 90 to 93) such that the matter was not at issue and could not be pretried or tried until the motion was settled, as says the decisions of **Leeds v. C. C. Chemical Corp.**, 280 So.2d 718, 719 Fla. App. 3d DCA, 1973) and **Ellis v. Ellis**, 242 So.2d 745 (Fla. App. 1971) and as a part of the trial

Judge Menendez found LESLIE and RANDY "fit" and gave them joint custody of TIFFANY.

(d) This was done, notwithstanding the fact that Carole Priede, Court Counsellor, who wrote the investigative reports for the Court (A: pgs. 276 to 284; pgs. 293 to 297; and pgs. 298 to 299) was in the hospital as she recently testified.

(e) The court must obey the rules, and to do otherwise is beyond their jurisdiction, such that whenever the court violates a rule, it's actions are void.

(f) Judge Menendez therefore tried the matter illegally, which produced a final judgement that was void-ab-initio (A: pgs. 3 to 11).

(g) WISHART established that fact by appeal to enforce inter-alia **Rule 1.440, Fla. R. Civ. P.** (A: pgs. 48 to 62; pg. 116 ¶ f to pg. 117; pg. 135; and, pgs. 136 to 165) and in due course WISHART succeeded (A: pgs. 12, 14 and 15), or so it seems from a plain reading of the language of the Opinion of the Second District.

(h) An analysis of the meanings of the terms used is set out in the appendix at pages 186 to page 191 paragraph 5.

(i) The effect of a reversal being to void the "Final Judgement", then, and particularly since the Judgement is void on it's face (A: pg. 4 ¶ f and pg. 5 ¶ 5) WISHART has from the beginning treated the final judgement as void and now voided. (Cf. A: pg. 192 ¶ 3 to end of page).

(j) Unfortunately, the lower court judges distorted the order, without reviewing the record on appeal as the appellate panel had (A: pg. 12 ¶ 7; and Cf. pgs. 48 to 62) and took the opinion to be a finding that the WISHARTS were never given a hearing, that the Final Judgement was valid, that LESLIE was fit, and that all the WISHARTS would be given and that grudgingly was a "hearing" somewhat in the vein, of giving a man a fair trial before we hang him.

(k) The net effect, was that the WISHARTS are being tried in the Court House lunch room, by gossip, and the record, which speaks for itself has been ignored.

(l) The WISHARTS were never restored to their status prior to the void Final Judgement, and are not even given the benefit of the visitation granted to BOBBIE therein, so that we have the anomaly of a void judgement which is used to keep TIFFANY from the WISHARTS care, custody and control, while being ignored as to the privileges it affords at least BOBBIE (A: pg. 8 ¶ 13).

(m) therefore after Judge Hodges left, no contempt was determined, to the point that Judge Evans will not even consider LESLIE'S contempts, and the WISHARTS only saw TIFFANY a few hours since April 29, 1985, and not at all for over a year.

(n) The net result has been that no fresh evidence, or might it be said precious little evidence was obtained, save for the medical neglect inadvertently exposed by Margaret Murphy of HRS, when she attached a letter to her report from Dr. Jeansonne, with the intent to show that TIFFANY was well and well cared for, when the reverse was true as WISHART proved (Cf. A: pg. 335).

(o) When the proof of medical neglect requires continuing proof of "...a recurring pattern of care which on a repeated basis constitutes medical neglect . . . ." (A: pg. 302), and which WISHART in the past sustained, to the point that Drs. Lipschutz, Hough, Hedrick and Hillseth (who testified before Judge Evans) concurred that TIFFANY'S best interest would be best served with the WISHARTS, it is manifestly unfair to violate the purpose of **§ 61.131, Fla. Stat. (1983)** by separating TIFFANY from the WISHARTS without an opportunity for them to be heard and present evidence.

(p) Since that is the basic minimum requirement and definition of due process of law, and is also the same language used by the Second District (A: pg. 12), it is clear that the WISHARTS have lost their power to protect TIFFANY without due process of law, and by the obstinacy of the trial, and now appellate court judges to enforce what they know to be the law, they have breached another point of due process, namely that a trial be fair.

(q) What is fair about illegally enforcing a void and voided order to keep TIFFANY from the WISHARTS while not so much as allowing them to see her, and then having the gall to complain, as Judge Evans has, that the evidence is all years old.

(r) Such would then be the arguments, had Judge Evans tried to put the matter to trial when the Courts, by violating the law, made the trial difficult if not imposible, and certainly imposible when it was the deliberate intent of the Judges, with a few ex-exceptions, to strip TIFFANY from the WISHARTS by all means fair or foul.

(s) To put it simply, WISHARTS' position from the beginning was that such a "trial" is nothing more than a mistrial, and they have not even begun to put on their case, much less have they concluded their case.

15. Moving along, WISHART would show that they had not voluntarily rested.

16. They had been denied the opportunity to be the respondents who had custody of TIFFANY and to go second since the pleadings from the beginning (A: pg. 63 ¶ 6 to pg. 64 ¶ 7; and pgs. 166 to 172) reflect WISHART has TIFFANY and LESLIE wants her back.

17. To exascerbate the matter, Judge Evans, refused to consider evidence relating to the moral values by which LESLIE was to be determined fit, rejecting **State ex rel. Singleton v. Woodruff**, 13 So.2d 704, 705, (Fla. 1943).

18. Without a common yardstick as to right and wrong our society is collapsing.

19. HRS'S standard is that to make a moral judgement would be to impose religion on people which they consider as a violation of that "Constitutional requirement of separation of Church and state", at least in their rationale.

20. The end result is that LESLIE could live with 5 men at the same time and still be fit to raise TIFFANY in HRS'S eyes.

21. Judge Evans went further and would not receive evidence that LESLIE is a liar, and had lied inter-alia to the Court.

22. She admits that she has the right to lie, and has lied, so long as she is not under oath (A: pg. 263 line 11 to pg. 264 line 21.

24. But she did not follow that rule (Cf. A: pg. 360 ¶ 2).

25. WISHART plead, but was refused the opportunity to prove up what is a clear fact from the record, that LESLIE has directly and indirectly through her attorney's lied to the Court with impunity (Cf. A: pg. 68 to 85 and pg. 169 ¶ 15 to pg. 170 ¶ 1)

26. **Ryan v. Ryan**, Fla. 1973, 277 So.2d 266 did away with the defense of recrimination save for lying to the Court, for which activity LESLIE may be thrown out of court.

27. WISHART has plead the clean hands defense, but Judge Evans will not allow proof of LESLIE's lying, even when they are spread across the record.

28. Since Margaret Murphy testified that WISHARTS witnesses were not contacted, save for character witnesses, her report must then be based on what LESLIE and her "husband" Richard Larry Boggs (BOGGS) told her, or the witnesses that LESLIE supplied, and it is one short step to impeach that report, which WISHART has worked hard to do, by showing that LESLIE and BOGGS are careless with the truth.

29. Thus WISHART did not wish to conclude the case once started, but to somehow get the truth in, such that Judge Evans stopped WISHART from fully examining Mrs. Murphy to impeach her report which was full of lies and fabrications.

30. The closest WISHART came to concluding their case in chief was when they found themselves cut off from proving deceit, unclean hands etc., and having run out of matters to go into, and expecting a mistrial due to Judge Evans rulings, they "rested". CHARLES thereafter stated and Judge Evans allowed that he could pursue (at least) more of the HRS workers involved in Mrs. Murphy's report or with TIFFANY.

31. When CHARLES tried to finish his examination of Mrs Murphy on the 14th of December 1985 he was not allowed to.

32. Likewise BOBBIE was not allowed to examine her.

33. The WISHARTS were forced to rest under protest, but with an assurance, as they had before Judge Menendez of a mistrial.

34. The WISHARTS have yet to be allowed a lawful hearing to deprive them of their lawful authority over TIFFANY.

the step-grandparent and natural grandparent respectively, on their counter-claim seeking permanent custody of their granddaughter, Tiffany Bates,

35. One of the great problems with this case, is that all of the judges treat this as a grandparent rights case. and considering that grandparents have little rights have treated the WISHARTS with disdain if not contempt.

36. The WISHARTS perceive TIFFANY to be their granddaughter, and TIFFANY loves them as such, but this case came about from a different direction.

37. **Section 61.131, Florida Statutes (1983)** does not operate from a special blood relationship between the child and the persons caring for her.

38. The only requirement is possession by a person other than a natural parent to invoke the statute to force inquiry as to the anomaly of another than the natural parent(s) providing for a child.

39. The Court perceives the WISHARTS as interlopers, but the WISHARTS perceive themselves as having taken the responsibility for caring for TIFFANY when LESLIE was found incapable and not inclined to care for her.

40. LESLIE wanted her rights but refused to meet her responsibilities, and the WISHARTS took up the responsibilities she discarded.

41. A close examination of the record will show that it is LESLIE'S rights that have been put forceably forward by the Courts, and that to the harm of TIFFANY, who for instance has never even seen by Judge Evans, even before issueing this recent order.

42. In their zeal to cut off the WISHARTS as grandparents, the whole purpose of **Section 61.131, Florida Statutes (1983)** was thwarted, the opportunity to have a voice speak on behalf of a child, who needs a guardian other than it's own natural parents.

43. Someone should look out for TIFFANY and stop trying to impress a standard solution on TIFFANY'S life when she needs much more.

44. LESLIE has on numerous occasions for example lied concerning TIFFANY'S medical care and condition, to the harm of TIFFANY.

> **and considering the evidence and all reasonable inferences which could be drawn from the evidence in a light most favorable to the counter-claimants, the court has concluded that the counter-claimants have shown no right to the relief sought and consequently the counter-defendant, LESLIE BATES', [natural mother of Tiffany Bates] motion for involuntary dismissal pursuant to Rule 1.420 (b) of the Florida Rules of Civil Procedure should be granted.**

45. To make that conclusion, Judge Evans had to ignore evidence on morals, medical neglect testimony and exhibits including those from Drs. Hillseth, Hedrick, Lipschutz and Hough.

46. WISHART proved the pattern of neglect, extended it from 1982 through to December 1985 and to February 1986, a hard task with no contact, but might one consider how simple it would have been after so many years of being accused of neglecting TIFFANY, for LESLIE to discipline herself to care for TIFFANY so as to make the issue go away, yet she did not.

47. As WISHART testified, TIFFANY was very sick on and before the 18th day of December 1985 A: 335, she was in LESLIE'S care and was receiving no medical treatment.

48. WISHARTS request for use of RANDY'S visitation was granted, and LESLIE was to give TIFFANY to the WISHARTS on the 18th.

49. To avoid obeying Judge Falsone, LESLIE delivered TIFFANY to RANDY (the first time he had seen her in over 9 months) and when the WISHARTS protested, RANDY gave TIFFANY back to LESLIE.

50. Then and only then did LESLIE take TIFFANY to Doctor Jeansonne to have an excuse for not delivering her to the WISHARTS.

51. That is medical neglect, and of a particularly cruel form.

52. LESLIE didn't care that TIFFANY was very ill, but she hated the thought of her being with the WISHARTS and would use any devious means to thwart it. (A: pg. 360 ¶ 2)

53. TIFFANY is not being properly cared for and the Courts care not, but to cover up the truth the WISHARTS have fought long and hard to bring forth for TIFFANY.

54. Proof that Judge Evans did no more than prevent the truth from being presented, and that he did not examine the evidence, is manifest by the fact that he ignored the HRS report, knowing it was fatally flawed, and turned instead to a discussion of what he, his predecesors and the co-conspirators in the Second District had done to depriving TIFFANY of the WISHARTS' protection without due process of law.

Because of the extraordinary judicial history of this case beginning in 1983, the court wishes to make the following observations:

55. WISHART concurs that the present case has an extraordinary judicial history.

56. They would point to the Article in The Florida Bar Journal, Volume LXI, No. 10, November 1987, wherein, after a statewide survey, the officers of the Family Law Section of the Bar indicted the family law system as proof of a systemic problem.

57. The WISHARTS would concur that there is a serious problem, but does not suggest more administration and specialization is the answer, but rather a return to fundamental moral values, stricter adherance and respect for the truth, and a skill in using the clean hands doctrine to both protect the integrity of the Courts, and as well the sanctity of marriage and family relationships.

58. Automatic divorce is contrary to the law, and the best interest of our society.

59. Our judges are in general not qualified to determine which marriage is irretrievably broken and which is not.

60. The result is our judges have given up, there is anarchy in the streets, and our jails are filling up with our children who "Don't know how to come in out of the rain."

61. The unique characteristic of this one case, is that, while young marriages have little hope, and can be easily devoured by our courts, in this case, when CHARLES and BOBBIE were made necessary parties, they set out to protect the marriage, the parents and TIFFANY, as is the function of the Courts in **Section 61.13, Florida Statutes (1983)** and since the Courts had abdicated, and thought they could brush away the

WISHARTS as they commonly do with the young families, there is little or no defense to a dissolution of marriage suit, the WISHARTS saw TIFFANY, and for that matter RANDY and LESLIE needed them and they took their stand on behalf of the family.

62. The proof is the arbitrary, and capricious patterns used to cut off the WISHARTS without giving them a due process hearing while now arguing they had one.

63. CHARLES happened to have a certain skill and knowledge of the law, the writs, and a willingness to use them for TIFFANY, no matter how the Courts might react.

64. WISHARTS evidence is enough to show a clear pattern of neglect, lying, immoral conduct, including substance abuse, and the Courts have no business trying to make such matters irrelevant, or to sweep them under the rug.

65. Judge Evans, in spite of his efforts, has failed to impeach the WISHARTS evidence, and there is enough to raise issues at least for LESLIE to counter, and further, after such a long pattern since 1982 to the present, WISHART should prevail.

This marriage dissolution action between Leslie Bates and Randall Bates was commenced in 1983. The Wisharts were joined as parties in the original action because of their involvement in the custody of Tiffany Bates.

66. Having developed the cause and motives for the WISHARTS being concerned for TIFFANY, and their response when sued for her return little more need be said.

On June 2, 1983 the Wisharts filed a counterclaim alleging that the natural parents were unfit to have custody of their own child and affirmatively sought to have custody granted to them.

67. WISHART filed an answer with affirmative defenses and a counterclaim to LESLIE'S complaint on June 1, 1983 (A: pgs. 63 to 66).

68. WISHARTS position that both RANDY and LESLIE were immature and needed not a divorce but help, and because of TIFFANY'S special needs, she should remain with the WISHARTS until the marriage could be worked out, and if not then, TIFFANY should reside permanently with the WISHARTS.

Leslie Bates, the natural mother, filed an answer to that counter-claim on September 21, 1983. Thereafter, a Pre-trial Order dated August 24, 1984, was entered by Judge Manuel Menendez, Jr., stating in paragraph 10(b) as follows:

69. Most of the above is technically accurate, but Judge Evans is trying to distort the fact that WISHART started with TIFFANY, and from the beginning LESLIE plead for the return of TIFFANY while the WISHARTS plead that they had her and it was in TIFFANY'S best interest that she remain with them based on moral and medical grounds.

70. The WISHARTS have never lawfully lost their original guardianship status.

71. An examination of the pretrial order (A: pg. in light of CHARLES AFFADAVIT (A: pgs. 68 to 85 will show that WISHART is not making a "petition for custody" but rather objecting that, LESLIE had not an-

swered the WISHART counterclaim, and that since John Hoft (HOFT), LESLIE'S first attorney, had argued WISHART out of their due process hearing before Judge Knowles by misrepresenting the effect of the unanswered counterclaim, WISHART had defaulted LESLIE for the failure to timely answer the counterclaim.

72. HOFT'S response was to deny knowledge of the very counterclaim he had so effectively misrepresented before to keep the WISHARTS from being heard.

73. WISHART was not petitioning for "custody" but rather trying to convince the court that a lie could not lay a predicate for an excusable neglect as would bar a default, such that under the clean hands doctrine, LESLIE'S pleadings should be dismissed with prejudice and the WISHARTS given full custody rather than the temproary primary residency BOBBIE then had.

74. LESLIE'S filing of her answer to WISHARTS' counterclaim was in response to WISHARTS' Motion for Default.

> **"Wisharts' request to grant custody of Tiffany to Wisharts and all testimony pertinent thereto shall be heard and considered by this Court at the Final Hearing in this cause."**

75. As explained above, WISHARTS' continuous pleading was to keep TIFFANY.

76. Judge Evans and the other judges will have to look elsewhere to make the WISHARTS other that respondents, counter-petitioners to LESLIE'S petition to remove TIFFANY from them.

77. WISHART in their pleadings, as has been said, were requesting that they keep TIFFANY.

At the conclusion of that Final Hearing held before Judge Menendez in December, 1984, the court entered a Final Judgement which clearly recited that the court had considered the claims of everyone involved, including the Wisharts, as to the custody of Tiffany Bates and specifically found from the evidence presented that both the natural mother and the natural father were fit parents. Shared parental responsibility was awarded to the parents and the child was to have her primary physical residence with the mother, Leslie Bates.

78. The Final Judgement so called speaks fot itself, but on it's face reflects that the matter could not be put to trial since the pleadings were not settled, and therefore the trial was beyond the jurisdiction of the court and the judgement was void, and could in no way effect the WISHARTS, or their authority over TIFFANY, neither then nor now.

The finding of fitness of the natural parents necessarily determined the Wisharts' claim for custody against them because natural parents are entitled to custody of their own children unless they are found to be unfit.

79. For there to be a finding of fitness, there had to be a legal trial, and there was not, and LESLIE has not been found to be fit.

80. As the record and WISHARTS' testimony and exhibits reflect, at the hearing before Judge Steinberg on December 20, 1987 the medical question went begging since HRS withheld WISHARTS evidence from

Dr. Lipschutz (Cf. A: pg. 301 with pg. 302) but an examination of the transcript of the hearing, on file, will show that the morals issue caused TIFFANY to be placed in BOBBIE'S care when LESLIE declined to go into the matter of her mother living with Charles Utterback without being married, that LESLIE had several live in boyfriends, one of which was Lam Ray Yarborough, etc..

81. So, for LESLIE to be found fit, she would have to show a great change, which is not manifest, for as usual she lied several times during her examination by CHARLES in his case in chief, as Judge Evans must be aware.

On April 25, 1985, Wisharts' motion for rehearing was denied. Thereafter the Wisharts took an appeal and the appellee, Leslie Bates, did not make an appearance before the Appellate Court.

82. Technically, LESLIE did make a belated appearance (A: pg. 13).

83. Regrettably, before Judge Menendez rendered the Final Judgement, Judge Evans heard CHARLES arrgue that the trial was illegal, a violation of **Rule 1.440, Florida Rules of Appellate Procedure**, since there was a motion to strike WISHARTS' last pleading, that therefore the trial and final judgement was void, and should be declared so, whether collaterally or directly, and Judge Evans declined to rule since "He was not the trial judge."

84. Regrettably, CHARLES promised Judge Evans that should the judgement be rendered, that he would return TIFFANY to LESLIE.

85. The promise should never have been given, but CHARLES honored it knowing the final judgement was void, and could be ignored, and for this respect shown to Judge Evans, the WISHARTS have been severed from TIFFANY, and she from their protection.

86. nonetheless WISHART appealed, reversed the void judgement, and no one will give them the fruits of their victory, their restoration to a position where they may watch over TIFFANY and enioy her company.

On April 2, 1986, the Appellate Court rendered the following opinion:

"The appellants [WISHART] appeal the denial of their petition for custody of their granddaughter.

The court having reviewed the record finds that appellants should have been afforded an opportunity to be heard and present evidence at the custody hearing.

We therefore reverse and remand for further proceedings consistent herewith."

87. Having developed the clear meaning of the opinion in light of the true nature of the appeal, and the record on appeal which was the basis for the reversal, WISHART states that they have been unlawfully deprived of TIFFANY without due process of law.

88. In light of the appeal brief, and the index to what constituted the record on appeal, it becomes clear that Judge Evans has been badly misled by the court house gossip to a ludicrous conclusion that WISHART misled the Second District Court of Appeal

to believe that the WISHARTS were not given a " . . . hearing on their counterclaim." for that is what we find Judge Evans saying, and worse acting on when he says:

> **It is clear from this opinion that the Second District Court of Appeals was under the impression that Judge Menendez had not afforded the Wisharts a hearing on their counter-claim.**

89. CHARLES tried to explain the matter to Judge Evans at his "closing argument".

90. All that is clear, is that Judge Evans has been misled, but not by the WISHARTS, for their motions are full of explanations as to what occured, so as to be reinstated to their prior lawful status, so that eventually a lawful trial might be held.

91. What seems most grevious, is that Judge Evans does not read WISHARTS' pleadings and motions, voluminous as they have regrettably become, or if he does, it is to find a portion, taken out of context, to prove what he thinks he knows, but does not.

> **Upon remand the undersigned, as presiding judge of Family Law Division "D", went forward with another hearing on the WISHARTS' counter-claim.**

92. As WISHART has stated previously, Judge Evans did indeed go forward with a trial, over their protests that their evidence was old, and that caused by the courts abuses, that a fair trial could not be held, without use of the clean hands doctrine to even things out, which would have left TIFFANY in the WISHART home with the WISHARTS working to develop a work- ing relationship with LESLIE.

The court has held hearings on the Wisharts' counter-claim for five days on the following dates: June 23, June 24, September 15, September 16, and December 14, 1987.

93. It is true that there were hearings on those days.

92. It was notable how often Judge Evans would insult the WISHARTS by reflecting how old their evidence was, and that it bore evidence stamps from Judge Menendez.

93. Could Judge Evans actually believe that the WISHARTS had lied to the Appellate Court, that the reversal was a sham, and therefore the WISHARTS worthy of no more that the abuse and summary dismissal–they have received?

94. At one hearing as WISHART was packing to leave Judge Evan made the following statement in a gruff and menancing manner:

"Get out of my court. Get out of here.

95. There has been no justification for such treatment, and little explanation save for the distortions caused by idle gossip.

96. No one has actually enquired as they should as to what the WISHARTS are saying to ascertain the truth of the matter.

During the presentation of their case the Wisharts repeatedly offered in evidence exhibits which had been earlier tendered to and received by Judge Menendez. The record reflects that the Wisharts

offered and Judge Menendez received in evidence on their behalf at least (19) photographic, other physical objects and documentary exhibits. Just for an example, Wisharts' Exhibit #4 received by this judge bore an evidence stamp by Judge Menendez indicating he had received the identical exhibit as Wisharts' Exhibit #17 baby's clothing). This is just one example of this matter. On more than one occasion during the five days of hearings conducted before the undersigned, it became apparent that the undersigned was hearing oral testimony which had also been presented to Judge Menendez for his consideration on the custody claims.

97. Just perhaps Judge Evans has been misled by fellow judges who he trusted too much, as they were trying to cover their own mistakes, perhaps.

98. It is quite reasonable to the WISHARTS to use the same evidence, and they will do so again should they be able to overturn this last denial of a fair hearing.

The record would seem to be clear that the Wisharts were in fact given an opportunity to be heard and to present evidence on their custody claim before Judge Menendez in 1984 and they have now had an additional five days of hearing in 1987 before the undersigned on the same claims.

99. WISHART originally estimated before the Menendez trial that the case would take at least five days to try.

100. Since much of their evidence as to morals, lying, violence, etc. has not been opened to their proofs,

nor were they allowed to strike the HRS report prepared by Mrs. Murphy, and since LESLIE did not have to put on any evidence to prevail, it is simple to conclude that the full and legal trial could go ten days to two weeks.

101. Of course Judge Menendez held a trial over WISHARTS' objections, for to walk out a manifest mistrial would bring a dismissal for want of prosecution.

102. That is true of the Menendez trial and WISHART would hope for the same result with the present trial wherein they have been deprived of their lawful status.

103. In any case, WISHART have misled no one.

104. WISHART is quite concerned that the misconceptions shown by Judge Evans is spread throughout the Court House and to the Appellate Judges as well, for there seems no other explanation for their arbitrary and illegal rulings if WISHART is not somehow conceived as someone other than a couple fighting for a child's welfare.

It is, therefore,

ORDERED AND ADJUDGED, that the motion of the counter-defendant, LESLIE BATES, natural mother of the minor child, Tiffany Bates, for involuntary dismissal of the counter-claim for custody filed by CHARLES F. WISHART and BOBBIE SUE WISHART be and the same is hereby granted and said counter-claim is dismissed.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, this 17th day of

December 1987, NUNC PRO TUNC December 14, 1987.

/S/
VERNON W. EVANS, JR., CIRCUIT JUDGE

105. Whether from misrepresentation from persons Judge Evans trusted to his and the WISHARTS harm, not to mention TIFFANY, nonetheless, the hostile attitude shown toward the WISHARTS by Judge Evans is inexcusable, and he should have recused himself for prejudice, a prejudice that is unwarranted.

106. The only proper resolution of this matter at this stage would be to reinstate the WISHARTS, allow them time with TIFFANY, to develop a pattern, and then after a number of months if not a year or more, to bring the matter to trial.

107. In addition, some means needs to be instigated to prevent the recurrance of what has happened to WISHART and many others.

108. WISHART has a legitimate claim, and must not be thrown out of Court as has happened on the basis of Judge Evans misconceptions.

WHEREFORE, the WISHARTS move the Court to reverse the Order of dismisal, to declare a mistrial and restore TIFFANY to the WISHARTS.

Respectfully submitted,

/s/
BOBBIE SUE WISHART
Phone: (813) 685-1240
410 West Bloomingdale
Brandon, Florida 33511-7402

/s/
CHARLES F. WISHART
Attorney at Law
Bar. No. 095782

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was furnished this 28th day of December 1987 to **LEE ELLEN ACEVEDO, Esquire;** Family Law Centers of Chawk and Associates; 1905 West Busch Boulevard; Tampa, Florida 33612; and to **RANDALL A. BATES;** 410 West Bloomingdale; Brandon, Florida 33511-7402.
Delivery by HAND [*] MAIL [x]

/s/
BOBBIE SUE WISHART

/s/
CHARLES F. WISHART

* Hand delivery to RANDY.
x Mail delivery to LESLIE.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY

FAMILY LAW DIV.

IN RE: THE MARRIAGE OF

No. 83-7250

LESLIE M. BATES (BOGGS), wife/ petitioner and counter-respondent

DIVISION "D"

and

RANDALL A. BATES, Husband/respondent, Counter-petitioner and cross-respondent

and

CHARLES F. WISHART, Cross & Counter-petitioner and BOBBIE SUE WISHART, Cross & Counter-petitioner

ORDER DENYING WISHARTS' MOTION FOR NEW TRIAL AND FOR REHEARING AND DENYING BATES' MOTION FOR ATTORNEY'S FEES

THIS CAUSE is before the court on post-trial motions following the netry of an order granting motion for involuntary dismissal of the Wisharts' counter-claim for custody of Tiffany Bates, and on Bates' motion for an award of attorney's fees.

It is evident from the argument that the Wisharts have misconstrued the court's order granting motion for involuntary dismissal. In the first paragraph of that order the court found, considering the evidence in a light most favorable to the Wisharts, that they had failed to establish the right to relief sought, to-

wit: custody of Tiffany Bates, and this ruling, of course, was based on the evidence presented before this judge during a five-day hearing and the order was granted at the close of the Wisharts' evidence. The references to the judicial history of the case and the proceedings before Judge Menendez were merely historical observations and did not form a basis of the court's ruling.

After consideration of all the arguments made on behalf of the Wisharts, the court finds no merit in their post-trial motions.

Bates' motion to award an attorney's fee is based upon Florida Statutes 57.105. The court is unable to find that there was a complete absence of any justiciable issue of either fact or law and therefore the motion to award attorney's fees must be denied.

It is, therefore,

ORDERED AND ADJUDGED that Wisharts' motion for new trial and rehearing of the order, etc., filed December 28, 1987, and Wisharts motion for rehearing be and the same are hereby denied;

and it is further

ORDERED AND ADJUDGED that Bates motion to award an attorney's fee be and the same is hereby denied.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, this 16th day of February, 1988.

Ver W Evans Jr

VERNON W. EVANS, JR., CIR. JUDGE

Copies furnished to:

CHARLES F. WISHART, ESQ.,
410 West Bloomingdale,
Brandon, Florida 33511-7402.

BOBBIE SUE WISHART,
410 West Bloomingdale,
Brandon, Florida 33511-7402.

LEE ELLEN ACEVEDO, ESQ.,
1905 West Busch Blvd.,
Tampa, Florida, 33612.

EXCEPTS FROM THE WISHARTS' INITIAL BRIEF IN WISHART v. BATES, 487 So.2d 342 (Fla. 2d DCA 1986), Appellate Case No. 85-1128

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Respectfully submitted,

Bobbie S. Wishart

BOBBIE SUE WISHART

Charles F. Wishart

CHARLES F. WISHART, ESQ.
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Supreme Court, U.S.
FILED
MAR 8 1989
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 88-1340

In The Supreme Court Of The United States

OCTOBER TERM, 1988

CHARLES F. WISHART, AND
BOBBIE SUE WISHART,
Appellants,

vs.

LESLIE BATES (BOGGS),
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF FLORIDA

MOTION OF APPELLEE TO DISMISS

LESLIE BATES (BOGGS)
P.O. Box 4
Seffner, FL 33584
(813) 623-6893
Appellee pro se

24pp

QUESTIONS PRESENTED

1. Whether the court has jurisdiction under 28 U.S.C. 1257(1), because neither the validity of a Federal law, nor a decision against its validity have been drawn into question.

2. Whether the court has jurisdiction because this litigation does not deal with matters of concern beyond the interest of the immediate litigants.

3. Whether the court has jurisdiction because this decision does not present a substantial Federal question and the Appellants questions are so unsubstantial as to not need further argument.

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MOTION TO DISMISS

Appellee, Leslie Bates (Boggs), respectfully moves pursuant to R. 16 (1)(b) and (d) to dismiss this appeal because no federal question was raised below and there has been no decision against the validity of a federal law, the questions presented affect only the immediate litigants and do not pertain to matters of public concern, and the issues presented do not raise substantial federal question meriting review by this court.

———o———

CITATIONS TO OPINIONS BELOW

The text of opinions, Judgments and Orders below are contained in the Appellants and/or Appellees Jurisdictional Statements.

———o———

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Appellee argues herein that the Wisharts have not been denied their "rights"

granted by the Treaty of Amity dated in 1819, the Paris Peace Tready dated in 1898, nor the Treaty of Friendship and General Relations dated in 1902.

The paramount issue is a childs best interests as protected by Florida Statute 61.13 and the Uniform Child Custody Jurisdiction Act.

o

STATEMENT OF THE CASE AND FACTS

In 1983 the Wisharts abducted Tiffany, and "refused" to return her to either of her natural parents.

In a legal effort to get Tiffany back, Leslie filed for divorce and custody of of Tiffany, in Bates v. Wishart, 13 Jud. Cir., Case No. 83-7250. (Listed in the Wisharts Table of Authorities as Case No. 83-7240.)

The Wisharts were enjoined because they illegally withheld a child from its natural parents, which did not give them

legal standing as "contestants".

The Wisharts have never had legal custody nor legal guardianship of Tiffany.

The Wisharts deliberately caused the the final hearing to be delayed until December 1984, at which time Leslie was granted custody of Tiffany.

The Wisharts refused to accept either the divorce or the custody decision, and appealed in Wishart v. Bates, 487 So. 2d 342 (Fla. 2d DCA 1986) (DCA No. 85-1128).

In deliberate defiance of court orders, Florida Statute 61.13, the Uniform Child Custody Jurisdiction Act, the Clean Hands Doctrine, Christian Ethical Values, and the Disciplinary Rules of the Florida Bar Association, they resorted to absconding with Tiffany.

After Tiffany was found and returned to Leslie, the harassment continued with motions and hearings without end, and visitation was canceled because no mother

should have to live in constant fear of her child being abducted.

The Wisharts conduct still involves dishonesty, fraud, deceit, and misrepresentation, that is prejudicial to the administration of justice.

By complaint, as instituted by Leslie, the Florida Bar Association has administered its own hearings and investigations into the misconduct of Charles Wishart. Their conclusion disclosed violations of eight Disciplinary Rules in conjunction with this litigation, (TFB No. 13C85100). Proceedings on their recommendation for disbarrment are pending in the Florida Supreme Court. (FSC No. 70,584)

Pursuant to Wishart v. Bates, 487 So. 2d 342 (Fla. 2d DCA 1986), (DCA Case No. 85-1128) the appellate court granted the Wisharts "further hearing" on their petition for custody, but the Final Judgment was neither voided nor reversed.

The Wisharts continued to file motions and set hearings based on their erroneous claim that they had custody of Tiffany, but continued to delay the "further hearing" obtained in DCA No. 85-1128.

Because the Wisharts continued to misrepresent that they had custody, the appellate court clarified that the Final Judgment was neither reversed nor voided, that Leslie still had custody of Tiffany, and the Wisharts had merely been granted "further hearing" on their petition for custody.

The Wisharts have kept this litigation ongoing since 1983 although this case file substantiates that Leslie is and always has been a fit and proper parent.

The hostility between the Wisharts and Leslie should have been sufficient cause for each of the long succession of judges to eliminate visitation and cease this

litigation.

Litigation has been further intricated and encumbered by the Wisharts "suits" against everyone they have involved including attorneys, doctors, H.R.S. personnel, and the judges.

In brief, due to the duration and complexity of this litigation, in conjunction with the long succession of judges, all accomplishments of the Wisharts, visitation has been granted, altered, and ultimately denied.

Judge Peter J.T. Taylor's "Order Disqualifying Charles F. Wishart as Attorney of Record for Bobbie Sue Wishart", dated August 2, 1986, has not deterred him from constantly filing motions.

At a procedural hearing prior to the conclusion of the "further hearing" by Judge Evans, a trial judge granted visitation and appellate cost to the Wisharts.

Leslie appealed in Bates v. Wishart, 512 So. 2d 977 (Fla. 2d DCA 1987), (DCA No. 86-2408) because visitation was granted at a procedural hearing of legal argument only with no evidence being heard as to Tiffanys best interests, and because the Wisharts were not entitled to appellate costs because the Final Judgment was neither reversed nor voided by the first panel in DCA No. 85-1128.

In DCA No. 86-2408, the second panel reversed the award of appellate costs because the first panel neither reversed nor voided the Final Judgment in DCA No. 85-1128.

The second panels mandate also reversed the award of visitation, but for reason other than that the trial court abused its jurisdiction in awarding visitation to the Wisharts with no evidence being heard as to the childs best interests as stated in Leslies brief.

The "further hearing" resumed and concluded with Judge Evans' "ORDER GRANTING MOTION FOR DISMISSAL OF THE WISHARTS COUNTER-CLAIM FOR CUSTODY OF TIFFANY BATES" dated December 17, 1987 pursuant to DCA Case No. 85-1128 which reaffirmed that Leslie is a fit and proper parent with custody of Tiffany and supercedes prior orders.

Simultaneous with the conclusion of the five days of further hearing proceedings before Judge Evans, the Wisharts invoked the jurisdiction of the Florida Supreme Court on DCA Case No. 86-2408. was denied.

The Wisharts motion for rehearing of Judge Evans order was denied.

The Wisharts filed a Notice of Appeal on the results of the "further hearing" they obtained in DCA Case. No. 85-1128.

They neither filed a brief nor a

motion to stay with the appellate court, and subsequently, their appeal, DCA Case No. 88-772, was dismissed.

The Wisharts presented no Federal question to the Florida Supreme Court in their appeal of Bates v. Wishart, 512 So. 2d 977 (Fla. 2d DCA 1987), (DCA No. 86-2408), (FSC No. 71,370), and the court addressed the only substantial question presented.

The mandate of the Florida Supreme Court did not reverse custody, but only remanded the issue of whether the trial court abused its jurisdiction in determining that awarding visitation to the Wisharts was in the childs best interests.

The Wisharts have filed a motion for a rehearing of the dismissal of DCA Case No. 88-772.

Currently, the Appellate Court has the mandate in Bates v. Wishart, 512 So. 2d

DCA 977 (Fla. 2d DCA 1987) (DCA 86-2408) (FSC No. 71,370) under consideration for re-wording and also the Wisharts motion for re-hearing of the dismissal of DCA No. 88-772; and after having denied Tiffany and Leslie their "rights" for six years through unmerited litigation, the Wisharts have invoked the jurisdiction of this Honorable Court on the grounds that "they" have been denied "their" rights granted by the Treaty of Amity, the Paris Peace Treaty, and the Treaty of Friendship and General Relations.

The paramount issue of Tiffanys welfare and best interests must cease being sacrificed for the Wisharts "rights".

o

I. THE COURT LACKS JURISDICTION UNDER 28 U.S.C. 1257(1) BECAUSE A FEDERAL LAW WAS NOT DRAWN INTO QUESTON AND THE DECISION WAS NOT AGAINST ITS VALIDITY

28 U.S.C. 1257(1) provides for appeal to the United States Supreme Court when

the validity of a federal law is drawn into question and the decision is against its validity.

No federal law was drawn into question below, and there has been no decision against the validity of a Federal law.

The Wisharts freedom of religion has not been denied, and their "rights" are not at issue.

Therefore, Appellee moves the Court to dismiss this appeal for lack of jurisdiction under 28 U.S.C. 1257(1).

o

II. THE COURT LACKS JURISDICTION BECAUSE THIS DECISION ONLY AFFECTS THE IMMEDIATE LITIGANTS

This litigation affects only Tiffany and Leslie, and is of no concern to the general public.

The flagrant abuse of the judicial system by Charles Wishart, the attorney, the officer of the court, the constitutional officer must not be allowed to set

a precident that could affect the general public.

The Appellants abuse of the judicial system, violation of the Florida Bar Disciplinary Rules, the Clean Hands Doctrine, state and federal laws, and lack of Christian Ethical Values, have only affected Tiffany and Leslie.

The cases set forth by Appellants are not related to the litigation in this appeal.

Justice in this case has been overdone for the Wisharts and delayed and denied for Tiffany and Leslie.

Leslie faced the Wisharts before Judge Menendez in the final hearing in 1984, and again before Judge Evans in 1987, and should not be subjected to the further delay and expense of a third trial in 1989.

Therefore, this Court should dismiss

this appeal as it only affects the immediate litigants and does not affect the general public, and the paramount issue of custody and/or visitation is moot.

o

III. THIS DECISION DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND DOES NOT NEED FURTHER ARGUMENT

The decision of the court below remanding a non-final order to the Appellate Court to reword their mandate reversing visitation that was granted that was not in Tiffanys best interest does not raise a substantial Federal Question and needs no further argument.

The Wisharts personal opinion of the problems with, and remedies for, the judicial system do not constitute a substantial federal question, therefore, this Court should dismiss this appeal.

o

CONCLUSION

For the reasons set forth above, it is

respectfully submitted that the within appeal should be dismissed due to lack of jurisdiction under 28 U.S.C. 1257(1), and/or because the issue of this appeal only affects the immediate litigants and and does not affect the general public, and/or because this appeal does not present a substantial Federal question and needs no furthur argument, and most importantly, continued litigation is detrimental to Tiffanys best interest and must cease.

Respectfully submitted
Leslie Bates (Boggs)
P.O.Box 4
Seffner, Fla. 33584

Appellee pro se

Dated: March 8, 1989

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,
Complainant,
v.

CONFIDENTIAL

TFB No. 13C85100

CHARLES F. WISHART,
Respondent.
_____/

NOTICE OF FINDINGS OF PROBABLE CAUSE FOR FURTHER DISCIPLINARY PROCEEDINGS

You are hereby noticed that the Thirteenth Judicial Circuit Grievance Committee C, on the 27th day of March, 1986, found probable cause for further disciplinary proceedings. The committee found violations of the following Disciplinary Rules.

(1) DR 1-102(A)(4) (Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation);

(2) DR 1-102(A)(5) (engage in conduct that is prejudical to the administration of justice);

(3) DR 7-102(A)(1) (file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure);

(4) DR 7-102(A)(3) (conceal or knowingly fail to disclose that which he is required to reveal);

(5) DR 7-102(A)(7) (counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent);

(6) DR 7-106(C)(4) (assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence for any position or conclusion with respect to the matters stated herein);

(7) DR 7-106(C)(6) (engage in undignified or discourteous conduct which is degrading to a tribunal); and

(8) DR 7-106(C)(7) (intentionally or habitually violate any established rule of procedure or of evidence).

The record of proceedings before the grievance committee has been referred to the undersigned staff lawyer for drafting and filing of a formal complaint pursuant to Florida Bar Integration Rule, article XI, Rule 11,04(6)(b) (1979).

Your further attention is called to Florida Bar Integration Rule, article XI, Rule 11.13(6)(a) (1979).

/s/ Lynn H. Cole

LYNN H. COLE, Chairman
Grievance Committee "13C"
Suite 611
315 East Madison Street
P.O. Box 2111
Tampa, Fla. 33601
(813) 223-5351

/s/ Stephen Rushing

Stephen Rushing
Branch Staff Counsel
The Florida Bar
Suite C-49
Tampa Airport Marriott Hotel
Tampa, Florida 33607
(813) 875-9821

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Probable Cause Findings for Further Disciplinary Proceedings has been furnished to Charles F. Wishart by Certified Mail, return receipt requested, No. P436 008 793; a copy to Gary R. Trombley, Designated Reviewer, Post Office Box 3356, Tampa, Florida 33601; John F. Harkness, Jr.,Executive Director, The Florida Bar, Tallahassee, Florida 32301-8226; and a copy John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226 on this 28th day of April, 1986.

/s/ Stephen Rushing

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
FAMILY LAW DIVISION

CASE NO. 83-7250

DIVISION G

IN RE: THE MARRIAGE OF:

RANDALL A. BATES, Husband, Respondent Counter-Petition, and Cross Respondent

LESLIE M. BATES, Wife, Petitioner, and Counter Respondent.

CHARLES F. WISHART and BOBBIE SUE WISHART Grandparents, Respondent, Cross-Petitioners, and Counter-Petitioners.

ORDER DISQUALIFYING CHARLES F. WISHART AS ATTORNEY OF RECORD FOR BOBBIE SUE WISHART

THIS CAUSE came on for hearing on Petitioner, LESLIE BATES (BOGGS') Motion to Disqualify before the undersigned Circuit Court Judge on July 30, 1986. Present in Court were Petitioner LESLIE BATES (BOGGS) represented by counsel, and CHARLES F. WISHART and BOBBIE SUE WISHART. The Court, being fully advised in the premises from the record, pleadings and argument of counsel, finds that CHARLES F. WISHART stated in pleadings and re-affirmed to the Court that he is a party in this action, that he has testified in

the past, and that he will testify in the future. Therefore, it is hereby;

ORDERED AND ADJUDGED, AND DECREED:

That CHARLES F. WISHART is disqualified as attorney of record for BOBBIE SUE WISHART as he will testify in this cause.

DONE AND ORDERED in Chambers at Tampa, Florida this 2nd day of August, 1986.

/s/ Peter J.T.Taylor

CIRCUIT JUDGE

COPIES FURNISHED TO:
CHARLES F. WISHART
BOBBIE SUE WISHART
LESLIE BATES (BOGGS)
RANDALL BATES
FAMILY LEGAL CENTERS
LEE ELLEN ACEVEDO

Supreme Court, U.S.
FILED
MAR 30 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1340

IN THE

Supreme Court of the United States

OCTOBER TERM 1988

CHARLES F. WISHART,
and BOBBIE S. WISHART,
Appellants,
vs.
LESLIE M. BATES,
and, RANDALL A. BATES,
Appellees,

APPEAL FROM THE SUPREME COURT
OF THE STATE OF FLORIDA

REPLY BRIEF

CHARLES F. WISHART, Esquire,
Attorney at Law,
and,
BOBBIE S. WISHART, his wife,
410 West Bloomingdale
Brandon, Florida 33511-7402

Phone: (813) 685-1240

Appellants appear pro se.

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REPLY BRIEF

PARTIES:

The parties are the WISHARTS CHARLES and BOBBIE, RANDY, LESLIE, and in fact TIFFANY.

PLEADING FORMAT:

LESLIE'S "Motion to Dismiss" shall be double indented, bolded and then answered by enfolding it into this brief with line by line comment as needed.

CITATIONS:

To contend with the courts which did not follow the rules but invented facts not true and certainly not in the record, the WISHARTS have been compelled to build a record on the run, to answer and refute lies fomented by certain trial and appellate judges in the Hillsborough County Court House coffee shop.

To this end WISHART has prepared such a system in their appendix at pages A-1 to A-19 as would facilitate citing and location of the records cited.

ANSWER TO LESLIE'S "MOTION TO DISMISS"

LESLIE'S "Motion to Dismiss begins:

MOTION TO DISMISS

Appellee, Leslie Bates (Boggs) respectfully moves pursuant to R. 16 (1)(b) and (d) to dismiss this appeal because no federal question was raised below and there has been no decision against the validity of a federal law, the questions ressented affect only the immediate litigants and do

not pertain to matters of public concern, and the issues presented do not raise substantial federal question (sic) meriting review by this court.

This matter was raised by appeal, a denial of the rights guaranteed by treaty under 28 U.S.C. § 1257(1).

The Supreme Courts of both Florida and the United States hold the Christian Ethic underlies our laws and must be adhered to, but the deterioration of our moral values practiced in our communities is well known, raising the question as to whether the courts shall maintain a high moral value or follow the crowd.

Courts function as the antithesis of politics, the guardians of our morality, limiters of social excesses, following the principles stated in *State ex rel. Singleton v. Woodruff*, 13 So.2d 704, at 705 (Fla. 1943).

WISHARTS' mini "Brandeis Brief" shall consist of the record of this 1983 case, their experience as parties, and CHARLES as an attorney, the article entitled "Family Law judicial System, Indictment from Within", The Fla. Bar Jour. Vol. LXI, No. 10, Nov. 1987, at page 11, which was written by a family law section officer, and a family law judge, after making a statewide survey which is no doubt representative of our nation, which explains much of what is happening in our streets; when the church goes, the family goes, and when the family goes the nation, and the Courts cannot be far behind.

While the article speaks of specialization and better administration as the solution; WISHART suggests a nationwide revival beginning with the courts as the real solution if there is to be one.

The article found everyone disgruntled with the system, two of which represented in turn, RANDY, in mid 1983, to the middle of 1984.

Ken Dandar never came back except once to aid a person who was dying.

Tom Fay left not only the family law practice, but also the practice of law for Oral Roberts University to train as a counselor to set up an alternative program to fill the void the courts created, to reconcile families as Section 61.001, Fla. Stat. (1983) was intended, to reverse the automatic divorce of *Riley v. Riley*, 271 So.2d 181 (Fla. 1st DCA 1972) and to restore the clean hands doctrine which *Johnson v. Johnson*, 284 So.2d 231 (Fla. 2d DCA 1973) abolished.

The WISHARTS, happily are Christians as are Dandar and Fay, CHARLES is a minister, who cannot see the eroding of our Christian values and not act.

LESLIE, TIFFANY and the WISHARTS are victims.

The issues that " . . . do not pertain to matters of public concern . . . ." are the drugs, aids, killing, sexual promiscuity, the overcrowded jails, signs that are reflected by our attorneys who say about the family law system, "It is wrong but there is nothing you can do about it."

CITATIONS TO OPINIONS BELOW

The test of opinions, Judgements and Orders below are contained in the appellants and/or Appellees Jurisdictional (sic) Statements.

o

Leslie intended her "Motion to Dismiss".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Each treaty guaranteed freedom of their religion, but the first was unique as it secures free exercise "without any restriction . . . ."!

> Such a right holds the Holy Bible, in the hands of a man led by God, to be a closed system which completely balances itself, with the man subject to God's chastisement and protection.

Having for 19 years field tested the Bible, with the end of proving it, and learning to make it work, CHARLES will certify that the word is true, it works, and what God says he brings to pass, on people and on nations, for good and for evil, but always justly.

On the other hand, our new social systems, predominantly based upon the study of the soul, thus called psychiatry, are based on a finite presumption that denies that man has a spirit as well as a soul, and being ignorant of that fact, much less having a personal relationship with the God of the Bible, they deny what they cannot understand, (or rather control) and have devised a maxim that makes them lord:

We cannot make moral judgements, for that would be making a moral judgement in violation of the Constitutional separation of Church and State.

With no moral values, or rather a specific system of moral values, or in this country the Christian System of Ethics underlying our laws, there is no law.

Of such is the outrage over abortion, and the violence in our streets, children with no working knowledge of why they should be good and not bad.

Psychiatry which does not believe in the biblical concept of sin, nor the existence of demons (which would require an acceptance of the spirit world), no sin needs no forgiveness, and patients are taught to live with their demons rather than cast them out.

The paramount issues is a childs best interests as protected by Florida Statute 61.13 and the Uniform Child Custody Jurisdiction Act.

o

Carole Priede, then Sr. Counselor, Juvenile Court, wrote an opinion to Judge Menendez 5 days before the "Final Hearing" was to start.

It was a part of the the record on appeal in *Wishart v. Bates*, 2d DCA Case No. 85-1128 (FSC-AIV: p. 748), Petitioner's (LESLIE'S) Exhibit #2, Composite of Documents, which included Priede's "Custody Investigation Report", filed Jan 7, 1985, and comprising (pp. 571-575), with attached documents (pp. 576-597).

Excerpts of the report are reproduced in A-20.

From those excerpts it is clear that the immoral conduct of LESLIE and her family could never be enough to prevent the Court from taking TIFFANY from the WISHARTS and giving her to LESLIE.

Carole Priede and those like her will not make moral judgements although that is far more important than the medical neglect which Drs. Hough, Lipschutz (HRS'S doctor), Hillseth, (FSC-AII: pp. 210-210) and Hedrick (FSC-AII: pp. 295-303) found to be neglect.

In a simpler time perhaps, wisdom was found when in *Watson v. State*, 194 So.2d 640, 642 (Fla. 1940) Justice Chapman reflected in a cohabiting case:

> It does appear reasonable to assume that from these facts the jury would be justified in finding that the parties had: (a) the ability; (b) the opportunity; and (c) the inclination, and when these three uncontroverted facts appear, as shown by the record, it is safe to conclude that the parties had intercourse, i. e., when the ability, opportunity and inclination of the parties is by the evidence fully established, it may be assumed as a matter of law that the act has been accomplished.

Of course without knowledge of the Bible the reason for protecting virginity and marital fidelity is unknown, but the Holy Bible reflects in 1 Cor. 6: 15-16 that God created men and women to bond for life.

Note that Section 61.13 Florida Statutes (1983) has has a subsection (3)(c) and (f) which are particularly pertinent in that when considering the best interest of TIFFANY, LESLIE'S lack of capacity and inclination to provide her with medical care is a factor against her, as is the latter section (3)(f) which questions LESLIE'S moral fitness to raise TIFFANY.

STATEMENT OF THE CASE AND FACTS

In 1983 the Wisharts abducted Tiffany, and re-"refused" to return her to either of her natural parents.

In a legal effort to get Tiffany back, Leslie filed for divorce and custody of of (sic) Tiffany, in Bates v. Wishart, 13 Jud. Cir., Case No. 83-7250. (Listed in the Wisharts Table of Authorities as Case No. 83-7240)

Here we have to point out a small character flaw in LESLIE, she can't tell the truth from a lie, and might well be subject to expulsion from the courts under *P_____ D_____ v. _____ C_____ S_____*, 304 S.W.ed 437 444 (Mo. Springfield C.A. 1965), or she at least might be found morally unfit due to perjury.

Previously, CHARLES prepared an affadavit which chronocles much of what LESLIE did during 1983, and why, so, for brevity that document will be cited as CHARLES' "Affadavit" hereafter. (FSC-AI: pp. 34-51)

What LESLIE said above is not true as the affadavit shows.

The Wisharts were enjoined because they illegally withheld a child from its natural parents, which did not give them legal standing as "Contestants".

WISHART never lost guardianship status over TIFFANY, but they have repeatedly lost physical control.

In this case surgery was scheduled due to an erroneous diagnosis of a chronic medical problem that was really only chronic neglect by LESLIE.

WISHART received TIFFANY from RANDY found her ill, as was common after LESLIE had her, and kept her as was their prior practice to cure her.

The legal standing came as LESLIE knows from Section 61.131, Fla. Stats. (1983). (FSC-AIII: p. 503)

The Wisharts deliberately caused the the (sic) final hearing to be delayed until December 1984, at which time Leslie was granted custody of Tiffany.

LESLIE fired her attorney John Hoft and his replacement Paul Tabio took some time.

The Wisharts refused to accept either the divorce or the custody decision, and appealed in Wishart v. Bates, 487 So.2d 342 (Fla. 2d DCA 1986) (DCA No. 85-1128).

The marriage could have been saved but for the interference and hatred from LESLIE'S mother.

It is after all difficult to have a minister in the family when the mother is living with a man without a marriage license.

The custody decision was revesed by the *Wishart v. Bates, Id.*, at 5.

In deliberate defiance of court orders, Florida Statute 61.13, the Uniform Child Custody Jurisdiction Act, the Clean Hands Doctrine, Christian Ethical Values, and the Disciplinary Rules of the Florida Bar Association, they resorted to absconding with Tiffany.

The final judgement was void ab-initio, pursuant to Rule 1.440, Fla. R. Civ. P., the grounds WISHART reversed the "Judgement" on, it was unrendered pursuant to Rule 9.020(g), Fla. R. App. P., but was being enforced by a "Writ of Habeas Corpus" with no return or rule to show cause (FSC-AII: p. 352), TIFFANY was sick again and needed the protection and care of the WISHARTS (FSC-AII: pp. 354-360), CHARLES appearance before the court was to no avail, a hearing was denied until they obeyed all of those void and unenforceable "orders" (FSC-AIII: pp. 445-463), and it took nearly 50 days to go through the 2d DCA, the Florida Supreme Court, and the Federal District

Court, Tampa (FSC-AIII: p. 584), in order to force the courts doors back open, after a night in jail (FSC-AII: pp. 369-407) after LESLIE'S attorney Paul Tabio told Judge V. Evans WISHARTS' motions were disposed of (FSC-AII: p. 381 l. 23 - p. 382 l. 15, and p. 384 l. 22 - p. 385 l. 2) at which time CHARLES prevailed by being released from jail since the judgement was not rendered and could not be enforced, and by causing thereafter Judge Menendez to render it (FSC-AIII: pp: 408-411) and then by voiding it (FSC-AII: p. 219).

Trials held in violation of the rules of procedure need not be obeyed *Johnson et al. v. McKinnon*, 54 Fla. 221, 45 So. 23 (1907) for they are void.

After Tiffany was found and returned to LESlie, the harassment continued with motions and hearings without end, and visitation was cancelled because no mother should have to live in constant fear of her child being abducted.

Very dramatic, but not true, TIFFANY was rereturned after Judge Menendez "rendered" his judgement and WISHART appealed and reversed it.

That very judgement gave BOBBIE visitation (FSC-AII: p. 216 ¶ 13.), which was modified by Judge Hodges to include CHARLES (FSC-AIV: pp. 755-757).

The WISHARTS' motions were for contempt, since LESLIE would not give them the visitation, much less the legal guardianship status they were entitled to.

TIFFANY was never found since she was with the WISHARTS lawfully, and it was WISHARTS that were being hurt and violated.

The Wisharts conduct still involves dishonesty, fraud, deceit, and misrepresentation, that is prejudicial to the administration of justice.

This brief reflects who is careless with the facts and long on the allegations and smears.

> By complaint, as instituted by Leslie, the Florida Bar Association has administered its own hearing and investigations into the misconduct of Charles Wishart. Their conclusion disclosed violations of eight Disciplinary Rules in conjunction with this litigation, TFB No. 13c85 100). Proceedings on their reccommendation for disbarrment (sic) are pending in the Florida Supreme Court. (FSC No. 70,584)

LESLIE complained, the Greivance committee found probable cause by refusing the allow CHARLES to go behind the order and judgement to show they were void ab-initio, and that the first had been voided by Judge Knowles who rendered it, while the Second District Court of Appeal, Case No. 85-1128 reversed the latter.

At trial, before the Honorable Judge Norris, WISHART presented as evidence the matters found in his 5 volume appendix (FBA-A).

One of the more outrageous events was that when CHARLES was charged with writing letters to Judge Knowles (actually CHARLES was responding to letters from Judge Knowles and John Hoft), CHARLES pointed out that DR 7-110 allowed such correspondence so long as it was:

> (3) In writing if he promptly delivers a copy of the writing to opposing counsel . . . .

CHARLES objected to a charge that the letters were ex-parte for copies had been sent to John Hoft.

The bar struck through the ex-parte portion and made it a violation of ethics to write a letter to a judge, with or without service on opposion counsel, and contrary to DR 7-110(B)(2).

Then without evidence or law Judge Norris found CHARLES guilty of all charges, the Bar recommended disbarment, and CHARLES concurred if his license would not allow him to compel the courts to follow the law, for if not the license had no value to him.

The Florida Bar Board of Governors, who would not talk with CHARLES, nevertheless recommended a three year suspension rather than disbarment which CHARLES categorically rejected since they did not know the facts, and CHARLES, having done no wrong, would not be able to show remorse to such a group, and an honorable disbarment from a system that did not follow its own rules and law looks attractive.

On appeal, CHARLES again rejected suspension, and set forth the law in the same detail as this brief, an perhaps more, showing there was no substance to Judge Norris' "Report of Referee" in his "Answer and Cross-Appellant Brief" (FBA-AB[9]: pp. i-viii, 1-65)

The Florida Bar'S "Complaintant's Answer and Reply Brief" (FBA-RB[11]: pp. i-iii, and 1-3) said in their third and last paragraph:

> The Bar finds it imposible to respond any further to the rambling arguments of the respondents 361 paragraph, 65 page Answer and Cross-Appellant Brief.

For their arrogance and violation of the rule that required them to respond, noting the rambling was the path Judge Norris took in his "Referee"s report" just as WISHART now follows LESLIE'S brief, CHARLES filed his "Motion to Strike and to Dismiss Complainant's Answer and Reply Brief and for other sanctions" (FBA-MS[12]: pp. 1-6)

Oral argument was held on February 8, 1989.

The Bar never had law or facts to contradict that presented by WISHART, but as was promised, this is a political case wherein WISHART is to taught where the power lies.

Pursuant to Wishart v. Bates, 487 So. 2d 342 (Fla. 2d DCA 1986), (DCA Case No. 85-1128) the appellate court granted the Wisharts "further hearing" on their petition for custody, but the Final Judgement was neither voided nor reversed.

LESLIE understands that the *Wishart v. Bates*, opinion was a grant of a further hearing, a rehearing if you would, and that fact manifest on the face of the "Final Judgement" means that WISHART was entitled to be restored to their guardian status, and that the *Bates v. Wishart*, 512 So.2d 977 (Fla. 2d DCA 1987) opinion based on false information, must be reversed, and with it the *Wishart v. Bates*, 531 So.2d 955 (Fla. 1988), for the WISHARTS had participated in the "final hearing" and having reversed the judgement before the first panel, are entitled to be restored to their prior status before facing any other litigation that is based upon the legitimacy of the Menendez "Judgement". (FSC-AII: pp. 211-218)

The Wisharts continued to file motions and set hearings based on their erroneous claim that they

had custody of Tiffany, but continued to delay the "further hearing" obtained in DCA No. 85-1128.

A void judgement can be attacked forever and wherever it appears.

At the same time. LESLIE admits the WISHARTS were not even getting the visitation given as an alternative to the custody that was denied them.

Therefore they could not obtain fresh evidence and it would appear unjust to deprive them of their guardian status, keep them from their visitation, and then after two years without seeing TIFFANY putting the matter to trial, but that is what happened.

Because the Wisharts continue to misrepresent that they had custody, the appellate court clarified that the final judgement was neither reversed nor voided, that Leslie still had custody of Tiffany, and the Wisharts had merely been granted "further hearing" on their petition for custody.

WISHART began with physical custody and a letletter of guardianship pursuant to Section 39.01(27) (FSC-AIII: p. 510-512) as LESLIE well knows.

Wishart v. Bates, Id., at 5, specifically "reversed" the judgement and the meaning of the word means to void it as says Black's Law Dictionary, 4th Ed. pg. 1482, and in accord *Securities and Exchange Commission v. C. M. Joiner Leasing Corp., et al.*, 53 Fed. Supp. 714 (U.S. Dist. Ct. N.D. Texas 1944).

The Wisharts havekept this litigation ongoing since 1983 although thus case file substantiates that Leslie is and always has been a fit and proper parent.

Why then was TIFFANY always sick in 1983 and well in 1984 when the WISHARTS had her care, and why wasn't the sugery performed if not because having kept her the WISHARTS got and kept her well throughout 1984.

The hostility between the Wisharts and Leslie should have been sufficient cause for each of the long succession of judges to eliminate visitation and cease this litigation.

One of the elements in Section 61.13, Fla. Stats. (1983) was subsections (3)(a) and (3)(b) which require:

(a) The parent who is more likely to allow the child frequent and continuing contact with the nonresidential parent.

(b) The love, afection, and other emotional ties existing between the parents and the child.

LESLIE has cut off the WISHARTS but also RANDY from any and all contact with her for years.

Richard Larry Boggs (BOGGS), her present husband, threatened RANDY with violence, attacked BOBBIE with an axe handle, and attacked CHARLES during a lawful visitation at LESLIE'S trailer and then jerked TIFFANY from LESLIE'S arms violently, and out of the WISHART home, where he was under orders to stay away from, all with LESLIE'S complicity and consent.

Once LESLIE told her then live in boyfriend, who was awaiting trial as a child molester, Lam Ray Yarborough, when he inquired as to what the WISHARTS would do if he appeared at their door she said:

Their home is open and they will let you in.

Thereafter he appeared at 3:00 A.M. and indeed was received with cordiality as she had said.

The hostility is from LESLIE'S side, and that be-being in fact admitted in her brief.

She has often used her own wrongdoing as grounds to cut WISHART and RANDY off from TIFFANY.

Litigation has been further intricated and entricated by the Wisharts "suits" against everyone they have involved including attorneys, doctors, H.R.S. personnel, and the judges.

The record speaks for itself, and would show what and for what reason various legal actions were taken.

When you are responsible for a child that is in hazard of unnecessary surgery is a system that cannot or will not respond timely what is to be done?

In brief, due to the duration and complexity of this litigation, in conjunction with the long succession of judges, all accomoplishments of the Wisharts, visitation has been granted, altered, and ultimately denied.

In fact that is true, but in law the WISHARTS have never been lost their visitation, but the judges will not enforce what they have, save that *Wishart v. Bates, Id.* at 12, restored an illegal visitation.

Judge Peter J. T. Taylor's "Order Disqualifying Charles F. Wishart as Attorney of Record for Bobbie Sue Wishart", dated August 2, 1986, has not deterred him from constantly filing motions.

The WISHARTS are parties to this suit.

Nevertheless, it was none of LESLIE'S business to object that CHARLES was acting as attorney so long as BOBBIE does not object.

Her obvious motive was to cut CHARLES out and leave BOBBIE helpless, and that is not the purpose of the rules that allow such representation.

At a procedural hearing prior to the conclusion of the "further hearing" by Judge Evans, a trial judge granted visitation and appellate costs to the Wisharts. Leslie appealed in Bates v. Wishart, 512 So. 2d 977 (Fla. 2d DCA 1987), (DCA No. 86-2408) because visitation was granted at a procedural hearing of legal argument only with no evidence being heard as to Tiffanys best interests, and because the Wisharts were not entitled to appellate costs because the Final Judgement was neither reversed nor voided by the first panel in DCA No. 85-1128.

The final judgement was reversed, the appellate costs were a consequence of that reversal, even if the WISHARTS only got a rehearing.

The law cited was argued before Judge Taylor, and everywhere else the matter arose, for the visitation was void for WISHARTS' reasons used by LESLIE, but, LESLIE has at each point ignored the visitation Judge Menendez gave through that "final Judgement" which if it is valid, then also the visitation, and further, that same visitation was modified by Judge Hodges to include CHARLES (FSC-AIV: pp. 755-757).

Further, LESLIE has willfully and intentionally refused and failed to tell the courts that WISHART had

been granted visitation before Judge Taylor's, namely from Judge Menendez' "Final Judgement" to BOBBIE and then from Judge Hodges (FSC-AIV: pp. 755-757) so that Judge Taylor changed nothing.

In DCA No. 86-2408, the second panel reversed the award of appellate costs because the first panel neither reversed nor voided the Final Judgement in DCA No. 85-1128.

Reversed voids the judgement, and is the equivalent of voiding the judgement with no more qualifiers.

Even if it was not a full reversal WISHART prevailed in that they won a new, or "further hearing."

The second panels mandate also reversed the award of visitation, but for reason other than that the trial court abused its jurisdiction in awarding visitaition to the Wisharts with no evidence being heard as to the childs best interests as stated in Leslies brief.

LESLIE did mislead the panel by arguing against grandparent visitation after Section 61.13(2)(b)c., Fla. Stat. (1985) was passed granting such visitation when she cited cases before that date.

The "further hearing" resumed and concluded with Judge Evans' "ORDER GRANTING MOTION FOR DISMISSAL OF THE WISHARTS COUNTERCLAIM FOR CUSTODY OF TIFFANY BATES" dated December 17, 1987 pursuant to DCA Case No. 85-1128 which reaffirmed that Leslie is a fit and proper parent with custody of Tiffany and supercedes prior orders.

WISHART had not seen TIFFANY since Saturday the 18th day of October 1986, and rarely before that.

That in spite of their right to restoration to their guardianship status, and even in spite of the lawful visitation begun by Judge Menendez and enlarged by Judge Hodges, and without any more contact than that, there was no reason to hold the trial.

After it was Judge Vernon Evans who had denied the WISHARTS contemptmotions earlier and thus emboldened LESLIE to disobey even the "Final Judgement" by cutting off the WISHARTS with impunity.

In addition, Judge Evans presumed the validity of the "Final Judgement" which presumed LESLIE to have been found fit, and placing the burden on the WISHARTS to show changed circumstances since the Menendez trial which they could not do.

Add to that the presumption that the trial was based on the lie the WISHARTS were accused of telling the 2d DCA, which was stated as the grounds for the involuntary dismissal (FSC-AV: pp. 925-927) until WISHART filed their motion for rehearing (FSC- AV: pp. 928-941) wherein they showed the true reason why Judge Menendez' "Judgement" had been reversed (FSC-AIII: p. 588 Question III), which caused Judge Evans to recant as to his reason for the involuntary dismissal but not from granting it.

It is sort of like shooting fish in a barrel.

Simultaneous with the conclusion of the five days of further hearing proceedings before Judge Evans, the Wisharts invoked the jurisdiction of the Florida Supreme Court on DCA Case No. 86-2408.

The Wisharts motion for rehearing of Judge Evans order was denied.

The Wisharts filed a Notice of Appeal on the results of the "further hearing" they obtained in DCA Case No. 85-1128.

They neither filed a brief nor a motion to stay with the appellate court, and subsequently, their appeal, DCA Case No. 88-772, was dismissed.

To this point LESLIE was doing all right, but where she says the WISHART did not file a motion to stay in the DCA # 88-772 she is in error.

WISHART filed their motion directed against that very case in the Florida Supreme Court case No. 70,-371, on the presumption that the Supreme Court had taken the case to correct the errors and excesses manifested in this case, one of which would have been the restoration to their status they were entitled after they reversed the final judgement.

The motion, of the 16th of May 1988 was entitled:

Motion to Stay Proceedings and to Strike and Reverse An Order Issued Contrary to Law and Procedure" (FSC-MO[10]: pp. 1-7).

The Wisharts presented no Federal question to the Florida Supreme Court in their appeal of Bates v. Wishart, 512 So.2d 977 (Fla 2d DCA 19-87), and the court addressed the only substantial question presented.

WISHART had not seen TIFFANY since Saturday the 18th day of October 1986, and rarely before that.

That in spite of their right to restoration to their guardianship status, and even in spite of the lawful visitation begun by Judge Menendez and enlarged by Judge Hodges, and without any more contact than that, there was no reason to hold the trial.

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The Wisharts filed a Notice of Appeal on the results of the "further hearing" they obtained in DCA Case No. 85-1128.

They neither filed a brief nor a motion to stay with the appellate court, and subsequently, their appeal, DCA Case No. 88-772, was dismissed.

To this point LESLIE was doing all right, but where she says the WISHART did not file a motion to stay in the DCA # 88-772 she is in error.

WISHART filed their motion directed against that very case in the Florida Supreme Court case No. 70,-371, on the presumption that the Supreme Court had taken the case to correct the errors and excesses manifested in this case, one of which would have been the restoration to their status they were entitled after they reversed the final judgement.

The motion, of the 16th of May 1988 was entitled:

Motion to Stay Proceedings and to Strike and Reverse An Order Issued Contrary to Law and Procedure" (FSC-MO[10]: pp. 1-7).

The Wisharts presented no Federal question to the Florida Supreme Court in their appeal of Bates v. Wishart, 51? So.2d 977 (Fla 2d DCA 19-87), and the court addressed the only substantial question presented.

There was one unique question of first impression raised, in the middle of the process, namely when trial and appellate judges conspire to swindle a perpon of a right gained by a successful appeal by the perversion of the plain language of the prior opinion into a lie, which was eventually blamed on the Wisharts since the record refuted the lie, then should CHARLES invoke his Constitutional Officer status under Art. V § 3.(b) (3), on the ground that it is the duty of an officer of the court to attack when the judges stray from their jurisdiction as is necessary to prohibit such practices by all means at hand.

Of course the most important issue, raised before Judge Menendez and thereafter was the demand that the Courts adhere to the Christian Ethic, and that includes their compelling the social services who make the reports to adhere to those values in their reporting and in the care and raising of children under their supervision, for with nospecific system of ethics underlying our laws there are no laws worthy of that name, for who can tell what is right and wrong.

To the degree that it has been raised as for example in Judge Menendez' "Pretrial Conference Order" (FSC-AII: pp. 244-247) wherein the WISHARTS are calling for enforcement of the clean hands doctrine, which was not being used, and by asking the Court to take judicial notice of the *State ex. rel. Singleton v. Woodruff, Id.*, at 2, the most clearly stated reasoning for the requirement to have a specific system of ethics underlying the law, and that ours is happily the Christian system.

This point with the appropriate cites have been raised thereafter, with the three treaties being a part of WISHARTS "Initial brief", 2d DCA Case No. 1128 (FSC-AIII: p. 590) and along with such other cases as

the *Singleton*, case, *King v. Daniel*, 11 Fla. 91, 99 (18-64-5) (FSC-AIII: pp. 484); *Randolph v. Randolph*, 1 So. 2d 480, 481 (Fla. 1941); and the Constitutional provisions as well regarding freedom of religion, etc..

The mandate of the Florida Supreme Court did not reverse custody, but only remanded the issue of whether the trial court abused its jurisdiction in determining that awarding visitation to the Wisharts was in the childs best interests.

The Wisharts have filed a motion for a rehearing of the dismissal of DCA Case No. 88-772.

Currently, the Appellate Court has the mandate in Bates v. Wishart, 512 So. 2d DCA 977 (Fla. 2d DCA 1987) DCA 86-2408) (FSC No. 71, 370) under consideration for re-wording and also the Wisharts motion for re-hearing of the dismissal of DCA No. 88-772); snd having denied Tiffany and Leslie their "rights" for six years through unmerited litigation, the Wisharts have invoked the jurisdiction of this Honorable Court on the grounds that "they" have been denied "their" rights granted by the treaty of Amity, the Paris Peace Treaty, and the Treaty of Friendship and General Relations.

The paramount issue of Tiffanys welfare and best interests must cease being sacrificed for the Wisharts "rights".

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WISHARTS' motion for rehearing in the 88,772 appeal was denied.

The only other worthy comment is that from the WISHARTS' point, they carried the responsibilities abandoned by LESLIE who only wanted her rights without her responsibilities.

As part of TIFFANY'S best "interests" is that she loves the WISHARTS and weants to be with them, for there is much of BOBBIE in her.

The mandate of the Florida Supreme Court did not reverse custody, but only remanded the issue of whether the trial court abused its jurisdiction in determining that awarding visitation to the Wisharts was in the childs best interests.

The Wisharts have filed a motion for a rehearing of the dismissal of DCA Case No. 88-772.

Currently,the Appellate Court has the mandate in Bates v. Wishart, 512 So. 2d DCA 977 (Fla. 2d DCA 1987) DCA 86-2408) (FSC No. 71, 370) under consideration for re-wording and also the Wisharts motion for re-hearing of the dismissal of DCA No. 88-772); and having denied Tiffany and Leslie their "rights" for six years through unmerited litigation, the Wisharts have invoked the jurisdiction of this Honorable Court on the grounds that "they" have been denied "their" rights granted by the treaty of Amity, the Paris Peace Treaty, and the Treaty of Friendship and General Relations.

The paramount issue of Tiffanys welfare and best interests must cease being sacrificed for the Wisharts "rights".

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WISHART has the "right" to expect the law to be followed, and for the truth to come out. and for society to not only give lip service but heart service as well to our values before it is too late.

I. THE COURT LACKS JURISDICTION UNDER 28 U,S.C. 1257(1) BECAUSE A FEDERAL LAW WAS NOT DRAWN INTO QUESTION AND THE DECISION WAS NOT AGAINST ITS VALIDITY

28 U.S.C. 1257(1) provides for appeal to the United States Supreme Court when the validity of a federal law is drawn into question and the decision is against its validity.

No federal law was drawn into question below, and there has been no decision against the validity of a federal law.

The Wisharts freedom of religion has not been denied, and their "rights" are not at issue.

Therefore, Appellee moves the Court to dismiss his appeal for lack of jurisdiction under 28 U.S.C. 1257(1).

o

As before these rights look far more like a responsibility, for the basic values of our society are at stake, everyone knows what is going on in out courts, but no one would take the burden before, or as the WISHARTS have repeatedly heard, face the reality, it is wrong but there is nothing you can do about it.

WISHART, and CHARLES has a different reality, and does not wish to tell his clients that nothing can be done when a childs welfare is at stake.

Of what value a law license that does not work.

II. THE COURT LACKS JURISDICTION BECAUSE THIS DECISION ONLY AFFECTS THE IMMEDIATE LITIGANTS

This litigation affects only Tiffany and Leslie, and is of no concern to the general public.

The flagrant abuse of the judicial system by Charles Wishart, the attorney, the officer of the court, the constitutional officer must not be allowed to set a precedent that could affect the general public.

The Appellants abuse of the judicial system, violation of the Florida Bar Disciplinary Rules, the Clean Hands Doctrine, state and federal laws, and lack of Christian Ethical Values, have only affected Tiffany and Leslie.

The cases set forth by Appellants are not re-related to the litigation of this appeal.

Justice in this case has been overdone for the Wisharts and delayed and denied for Tiffany and Leslie.

Leslie faced the Wisharts before Judge Menendez in the final hearing in 1984, and again before Judge Evans in 1987, and should not be subjected to the further delay and expense of a third trial in 1989.

Therefore, this Court should dismiss this appeal as it only affects the immediate litigants and does not affect the general public, and the paramount issue of custody and/or visitation is moot.

WISHARTS' Jurisdictional brief filed with the Flor-Florida Supreme Court contained a plea to the court to reinstate the law and it's underlying values and not send them back down the hill into a system that practices neither.

III. THIS DECISION DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND DOES NOT NEED FURTHER ARGUMENT

The decision of the court below remanding a non-final order to the Appellate Court to re-word their mandate reversing visitation that was granted that was not in Tiffanys best interest does not raise a substantial Federal Question and needs no further argument.

The Wisharts personal opinion of the problems with, and remedies for, the judicial system do not constitute a substantial federal question, therefore, this court should dismiss this appeal.

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The courts have a standard "cookie cutter" solution to divorce and child custody.

Mama gets the baby, and there is no defense to divorce, with the Tampa Bay area having a high rate, and LESLIE would have us stick our head in the sand.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the within appeal should be dismissed due to lack of jurisdiction under 28 U.S.C. 1257(1), and/or because the issue of this appeal only affects the immediate litigants and does not affect the general public, and/or be-

cause this appeal does not present a substantial Federal question and needs no furthur (sic) argument, and most importantly, continued litigation is detrimental to Tiffanys best interest snd must cease.

WISHARTS CONCLUSION

Clearly the system is wrong or it would not be so defensive, and violative of the basis principles of due process of law.

Thereis a grave problem, and all this case proves is that most people are turned away without justice.

WISHART would desire to regain authority over TIFFANY, but to also leave a precedent, that there is something you can do when the courts lose their way, become tyrants, and build fortresses for court houses because they do not trust the citizens.

Respectfully submitted,

Bobbie S. Wishart

BOBBIE SUE WISHART

Charles F. Wishart

CHARLES F. WISHART
Attorney at Law
410 West Bloomingdale
Brandon, Florida 33511-7402

APPENDIX

CITATION FORMATS

Citations are to the records under the Appellate Court and case they were initially filed in.

PREFIXES:

Each Court, including the trial court(s) shall have a prefix assigned to it, namely:

The 13th Judicial Circuit, In and For Hillsborough County, Tampa Division, Bates v. Wishart), Case No. 83- 7250, carries the prefix (CC- . . .).

The Florida Second District Court of Appeal, Wishart v. Bates, Case No. 85-1128, shall carry the prefix (DC1- . . .).

The opinion rendered is **Wishart v. Bates,** 487 So.2d 342 (Fla. 2d DCA 1986).

The Florida Second District Court of Appeal, Bates v. Wishart, Case No. 86-2408, shall carry the prefix (DC2- . . .).

The opinion rendered is **Bates v. Wishart,** 512 So.2d 977 (Fla. 2d DCA 1987).

The Florida Second District Court of Appeal, Wishart v. Bates, Case No. 88-772, shall carry the prefix (DC3- . . .).

No record was prepared pending a motion to the Florida Supreme Court to stay the appeal.

The Florida Supreme Court took no action on the motion and a subsequent petition for stay was denied and The District Court of Appeal dismissed

the appeal for lack of prosecution on the 6th day of February 1989, subject to appeal, or stay.

The Supreme Court of the State of Florida, The Florida Bar v. Wishart, Case No. 70,584, on appeal to The Supreme Court of the State of Florida, shall carry the prefix (FBA- . . .).

The Florida Bar Board of Governors recommended a 3 year suspension and not disbarment which CHARLES categorically rejected.

CHARLES has always opted for disbarment if his license to practice law could not compel the courts to follow the law.

No opinion had been rendered.

The Supreme Court of the State of Florida, Wishart v. Bates, Case No. 71,370, on appeal to The Supreme Court of the United States and on remand to the Florida Second District Court of Appeal Case No. 86-2408, shall carry the prefix (FSC- . . .).

The opinion rendered is **Wishart v. Bates,** 531 So.2d 955 (Fla. Sept 8, 1988).

The Supreme Court of the United States, Case No. 88-1348, shall carry the prefix (US- . . .)

No opinion has been rendered.

SUFFIXES:

Not every document making up the "Record on appeal" is in the Appellate Court it was initially prepared for and filed in, for in some cases parts of the

records have been returned to the trial court (CC), of lower appellate courts, while parts are retained in the original appellate courts.

A suffix shall be attached to reflect where the "Record on Appeal" is at present using the prefixes above as suffixes (CC, DC1, DC2, etc..)

Example: (DC1-RA: pp. 1-4)(CC) shows LESLIE'S "Petition for Dissolution fo Marriage", pages 1-4, filed on May 24, 1983, in the **Bates v. Wishart,** 73-7250, case, and made a part of the "Record of Appeal" in the (DC1) appeal of Judge Menendez' Fi-"nal Judgement of Dissolution of Marriage" (Which **Wishart v. Bates,** 487 So.2d 342 (Fla. 2d DCA 1986) reversed) has been returned to the circuit court (CC) files.

CITES TO THE RECORDS ON APPEAL:

Basic pleadings such as "Jurisdiction Brief, "Supplemental Appendix to Jurisdictional Brief", Etc., shall be cited, as (US-JB: p. 1) and (US-SA: p. A-1).

However, to be able to address "miscellaneous pleading" which do not lend themselves to such cryptic notations as "JB" or "SA", as for example the motion that was filed in both the (FSC) Case No. 71,370, and the (FBA) Case No. 70,584 simultaneously, with a certificate of mailing of 24 August 1988 more detail is required to identify the document cited.

Therefore the pleadings, are listed chronologically and then numerically, under each court name and case number so that the pleadings may be cited as above, with the additional of the bracketed number to assist finding the pleading (or exhibit) from these lists, as

for example (FSC-[11]: pp. 1-4) and (FBA- [11]: pp. 1-4), which cites reference:

11. 24 August 1988

WISHARTS' "Motion To Take Judicial Notice, To Stay, Join, or Enjoin The Above Styled Causes So That The Opinions Are Not Conflicting And So The Two Mutually Exclusive Cases May be Fully Developed" (FSC-[11]: pp. 1-4)

and,

8. 24 August 1988

WISHARTS' "Motion To Take Judicial Notice, To Stay, Join, or Enjoin The Above Styled Causes So That The Opinions Are Not Conflicting And So The Two Mutually Exclusive Cases May be Fully Developed" (FBA-[8]: pp. 1-4)

The bracketed number then is sufficient to identify the document under the appropriate court by reference to this appendix starting with the court citation.

APPENDICES:

Appendices, which contain their own indexes shall be cited to their own pages as for example:

(FSC-AI[nn]: p. 34) reflects the **Wishart v. Bates**, Case No. 70,371, the Civil Discretionary Review Petition to the Florida Supreme Court, Volume I of WISHARTS Appendix at page 34, WISHARTS' "Affadavit of Charles F. Wishart", dated 3 November 1983.

The cites to the record then follow:

**IN THE THE 13TH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
TAMPA DIVISION**

The index in the circuit can be handily divided into two portions, namely that through the appeal of Judge Menendez' "Final Judgement of Dissolution of Marriage" which was reversed in **Wishart v. Bates, et al.**, 487 So.2d 352 (Fla. 2d DCA 1986), the mandate is- sued May 16, 1986, cited from (FSC-AIV: pp. 737-751) followed by the name of the document cited.

By this device we may itilize the "Index to the Record on Appeal" from Cir. Ct. Case No. 83-7250, App. No. 85-1128; **Wishart v. Bates** since the index is incorporated into both of the 5 volume appendices on file in the Florida Supreme Court, namely **The Florida Bar v. Wishart,** Case No. 70,586 and **Wishart v. Bates,** Case No. 71,370 on pages 737 to 751.

That index shall be the basis for citing documents that were a part of the record but were not previously needed to answer issues now raised.

Other matters not in an index, or on file in other courts shall be cited as (CC) with the name and date of the document following.

THE FLORIDA DISTRICT COURT OF APPEAL
SECOND DISTRICT, LAKELAND, FLORIDA
Wishart v. Bates, Case No. 85-1128

Where the document is in WISHARTS' appendices (FSC-A: Vol. I pg. 1, to Vol. 5 pg. 987) that cite will be used with an appropirate suffix to show where the document can be located.

The format shall be (FSC-AVI: p. 1)

Cites shall be to the "Index to the Record on Appeal" for Cir. Ct. Case No. 83-7250, App. No. 85-1128 **Wishart v. Bates, et al.,** 487 So.2d 352 (Fla. 2d DCA 1986) when the appendices do not contain the document which had been a part of the initial appeal.

The format shall then be (FSC-AIV: p. 743) "Transcript of Testimony and Proceedings Taken Before the Honorable Ralph Steinberg on December 20, 1983" and (Filed 24 Jan. 1984)

1. **10 October 1985:**

Excerpts from WISHARTS' "Initial Brief" (FSC-AIII: pp. 586-594)

: WISHARTS' "Initial Brief" (DC1)

2. **2 April 1986:**

Wishart v. Bates, Opinion. (FSC-AII: p. 222)(DC1)

3. **11 March 1986:**

LESLIE'S "Motion For Rehearing" (DC1)

4. 1 May 1986:

Motion for rehearing denied (FSC: AII: p. 220) (DC1)

5. 16 May 1986:

Mandate (FSC-AII: p. 221)(DC1)

6. 9 June 1986:

WISHARTS' "Motion to Enforce Mandate" (FSC-AII: p. 221)(DC1)

THE FLORIDA DISTRICT COURT OF APPEAL
SECOND DISTRICT, LAKELAND, FLORIDA
Wishart v. Bates, Case No. 86-2408

Where the document is in WISHARTS' appendices (FSC-A: Vol. I pg. 1, to Vol. 5 pg. 987) that cite will be used with an appropirate suffix to show where the document can be located.

The format shall be (FSC-AVI: p. 1)

Where the document is not in WISHARTS' appendix Cites shall be to the "Index to the Record on Appeal" for Cir. Ct. Case No. 83-7250, App. No. 85-1128 **Wishart v. Bates, et al.,** 487 So.2d 352 (Fla. 2d DCA 1986).

The format shall then be (FSC-AIV: p. 743) "Transcript of Testimony and Proceedings Taken Before the Honorable Ralph Steinberg on December 20, 1983" and (Filed 24 Jan. 1984)

1. **13 November 1986:**

   Order requiring WISHART to file "Cross-Appellant's Brief" before December 15, 1986 (FSC-AV: p. 978)

2. **15 December 1986:**

   WISHARTS' "Cross-Appellants Initial Brief" (FSC-AIV: pp. 777-795)

   WISHARTS' "Index to Cross Appellants Initial Brief" (FSC-AIV: pp. 796-798)

3. **30 December 1986:**

LESLIE'S "Motion for Extension of Time to File Initial Brief (FSC-AIV: pp. 799-800)

4. **12 January 1987:**

Order Granting LESLIE'S "Motion to Extend Time" (FSC-AV: p. 801)

5. **21 January 1987:**

Leslie's "Initial Brief" (FSC-AV: pp. 802-821)

ATTACHED EXHIBIT: Judge Taylor's "Order Granting Motion for Appellate Costs; . . and Order Denying Amended Motion for Order to Enforce Primary Residency" dated 22 August 1986 (FSC-AII: pp. 223-225)

6. **9 February 1987:**

"WISHARTS' Motion for Rehearing and Denial of LESLIE'S Motion for Extension of Time to File Initial Brief, Motion to Strike Leslie's Brief and Portions of Her Appendix, Motion to Dismiss Leslie's Appeal, and for other relief including Motion for Protective Order Regarding Mailings" (FSC-AV: pp. 822-833)

7. **27 February 1987:**

"Appellees, pro se, having filed a motion for rehearing and denial of Leslie's Motion for extension of time to file initial brief, upon consideration, it is

ORDERED that the motion is hereby denied See **Dubowitz v. Century Village East, Inc.,** 381 So.2d 252 (Fla. 4th DCA 1979) (DC2)

8. **7 August 1987:**

Bates v. Wishart, 512 So.2d 977 (Fla. 2d DCA 1987) (FSC-AII: pp. 226-229)

9. **24 August 1987:**

WISHARTS' "Motion For Rehearing and Clarification" (FSC-AII: pp. 226-229)

10. **8 September 1987:**

LESLIE'S "Appellant's Response to Appellee's 'Motion for Rehearing and Clarification'" (DC2)

11. **23 September 1987:**

Appellee/Cross Appellants, having filed a motion for rehearing and clarification in the above-styled case, upon consideration, it is

Ordered that said motion is hereby denied. (FSC-AII: p. 231)

NOTE: WISHART was denied the right to answer LESLIE'S brief. Some of the cause was they never received the amended Appellee's Brief in the mail.

THE FLORIDA DISTRICT COURT OF APPEAL
SECOND DISTRICT, LAKELAND, FLORIDA
Wishart v. Bates, Case No. 88-772

The "Index to the Record on Appeal" for Cir. Ct. Case No. 83-7250, App. No. 88-772, **Wishart v. Bates,** was never prepared, but without fault.

WISHARTS' instructions to the Reporter were too cumbersome and the reporter refused to follow them.

WISHART moved the Florida Supreme Court to stay the appeal proceedings (FSC-[10]: pp. 1-7) but that court did not respond in any fashion other than to remand the case to the Second District Court of Appeal, Case No. 86-2408.

Motions to the Second District Court of Appeal, Case No. 86-2408 were denied, the case dismissed for want of prosecution, in spite of the fact WISHART was waiting on the Supreme Court to reverse the opinion, on the Supreme Court to dispose of their motion to stay, and finally on the Second District Court of Appeal to grant a stay pending appeal to the Supreme Court of the United States which was denied.

CITATIONS:

Where the document is in WISHARTS' appendices (FSC-A: Vol. I pg. 1, to Vol. 5 pg. 987) that cite will be used with an appropirate suffix to show where the document can be located, (FSC-AVI: p. 1)(DC3); but where the document is not in WISHARTS' appendix cites shall be to the "Index to the Record on Appeal" for Cir. Ct. Case No. 83-7250, **Wishart v. Bates, App. No. 85-1128, or directly to the circuit court file.**

SUPREME COURT OF THE STATE OF FLORIDA
The Florida Bar v. Charles F. Wishart
Case No. 70,584 On Appeal

APPENDIX:

CHARLES' "Charles' Appendix" (5 Volumes I-IV):

1. 14 March 1988

(FBA-AI: pp. 1-200)

(FBA-AII: pp. 201-407)

(FBA-AIII: pp. 408-601)

(FBA-AIV: pp. 602-800)

2. 10 March 1988

The Florida Bar's "Exhibits 1-23" (FBA-Ex[2]: Ex. 1-23)

3. 25 March 1988

CHARLES' "Charles' Appendix" (Volumes V):

(FBA-AV: pp. 801-797)

TRANSCRIPTS:

Transcripts of Trial before the Honorable William A. Norris, Jr, Referee:

4. 2 March 1988

(FBA-TR1[4]: pp. 1-58)

5. 10 March 1988

(FBA-TRI/II[5] pp. 1-165)

(FBA-TRII/II[5] pp. 166-324)

6. 25 March 1988

(FBA-TRIII[6] pp. 1-151)

(FBA-TRIV[6] pp. 152-299)

7. 4 April 1988

(FBA-TRV[7] pp. 1-194)

Note: WISHARTS' appendices in the Civil suit now on appeal in the Supreme Court are with few exceptions identical to CHARLES' appendices above.

8. 24 August 1988

WISHARTS' "Motion To Take Judicial Notice, To Stay, Join, or Enjoin The Above Styled Causes S That The Opinions Are Not Conflicting And So The Two Mutually Exclusive Cases May be Fully Developed" (FBA-[8] pp. 1-4)

9. 9 September 1988

The Florida Bar's "Initial Brief" (FBA-IB[9] pp. i-iii, 1-15)

10. 14 November 1988

CHARLES' "Answer and Cross-Appellant Brief" (FBA-AB[10] pp. i-viii, 1-65)

11. **23 November 1988**

The Florida Bar's "Complaintant's Answer and Reply Brief" (FBA-RB[11]: pp. i-iii, 1-3)

12. **2 December 1988**

CHARLES' "Motion to Strike and to Dismiss Complaintant's Answer and Reply Brief and for Other Sanctions" (FBA-MS[12]: pp. 1-6)

SUPREME COURT OF THE STATE OF FLORIDA
Wishart v. Bates, Case No. 71,370;

on appeal to
The Supreme Court of the United States
Case No 88-1340;

and, on Remand pursuant to
Bates v. Wishart, 531 So.2d 955 to
The Florida Second District Court of Appeal
Case No. 86-2408

1. **2 November 1987**

WISHARTS' "Jurisdictional Brief" (FSC-JB[1] pp. I-IV, 1-95)

2. **2 NOVEMBER 1987**

WISHARTS' "Appendix to Jurisdictional Brief" (FSC-AB[2] pp. i-viii, 1-65)

3. **10 December 1987**

LESLIE'S "Appellee's Response to Appellees (sic) Notice to Invoke Discretionary Jurisdiction" (FSC-R/JB[3] pp. i-ii, 1-8)

4. **15 March 1988**

WISHARTS' "Petitioners Brief", (FSC-PB[4] pp. i-vi, 1-29)

5. **15 March 1988**

CHARLES' 5 Volume appendix entitled "Petitioners Brief":

(FSC-AI[5] pp. 1-200)

(FSC-AII[5] pp. 201-407)

(FSC-AIII[5] pp. 408-601)

(FSC-AIV[5] pp. 602-800)

(FSC-AV[5] pp. 801-979)

6. 19 March 1988

LESLIE'S "Motion to Dismiss" (FSC-MD[6] pp. 1-2)

7. 8 April 1988

LESLIE'S "Respondent's Brief", has been enfolded into WISHARTS' "Petitioners Reply Brief" in the same format as this reply brief, and will be cited to the reply brief. (FSC-RB[7] pp. i, 1-29)

8. 5 May 1988

WISHARTS' "Petitioners Reply Brief", (FSC-RB[8] pp. i, 1-59).

9. 5 May 1988

WISHARTS' "Supplemental Appendix for (WISHARTS') Reply Brief", (FSC:SA[9] pp. i, 1-59).

10. 16 May 1988

WISHARTS' "Motion to Stay Proceedings and to Strike and Reverse An Order Issued Contrary to Law and Procedure" (FSC-MO[10] pp. 1-7)

11. 24 August 1988

WISHARTS' "Motion To Take Judicial Notice, To Stay, Join, or Enjoin The Above Styled Causes So That The Opinions Are Not Conflicting And So The Two Mutually Exclusive Cases May be Fully Developed" (FSC-[11] pp. 1-4)

12. 31 August 1988

"PETITIONERS' Motion To Take Judicial Notice, To Stay, Join, or Enjoin The Above Styled Cases is denied." (FSC-[12] p. 1)

13. 8 September 1988

Bates v. Wishart, 531 So.2d 955 (Fla. Sept. 8, 1988, reh. den. Nov. 8, 1988) (FSC-OP[13] pp. 1-4)

14. 21 September 1988

WISHARTS' "Motion for Rehearing and Clarification" ((FSC-MO[14] pp. 1-12)

15. 11 October 1988

LESLIE'S "Response to Motion For Rehearing and Clarification" (FSC-R/REH[15] pp. 1-10)

16. 24 August 1988

"Upon consideration of the Motion for Rehearing and Clarification filed in the above cause by petitiones, and response thereto,

IT IS ORDERED that said Motion be and the same is hereby denied. (FSC-[16 [: p. 1)

17. 8 September, 8 November 1988

"Mandate - The attached opinion was rendered on September 8, 1988". (FSC-MAN[17]: p. 1)

Bates v. Wishart, 531 So.2d 955 (Fla. Sept. 8, 1988, reh. den. Nov. 8, 1988) (FSC-OP[13]: pp. 1-4)

UNITED STATES SUPREME COURT
Wishart v. Bates, Case No. 88-1340

Appeal from The Supreme Court of the State of Florida Case No. 71,370. The opinion rendered is **Wishart v. Bates,** 531 So.2d 955 (Fla. Sept 8, 1988).

PLEADINGS:

1. **3 February 1989**

   WISHARTS' "Notice of Appeal" (US-NA[1]: p. 1)

2. **3 February 1989**

   WISHARTS' "Jurisdictional Brief" (US-JB[2]: pp. i-ix, 1-30, and A-1 - A-11)

3. **22 February 1989**

   WISHARTS' "Supplemental Appendix to Jurisdictional Brief" (US-SA[3]: pp. A-12 - A-70)

4. **8 March 1989**

   LESLIE'S "Motion to D miss" (US-L/MD[4]: pp. i-iv, 1-14, and A1-A5)

5. **nn March 1989**

   WISHARTS' "Reply Brief" (US-RB[5]: pp. i-nn, 1-nn, and A-1 to A-nn)

IN THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY
JUVENILE AND DOMESTIC RELATIONS DIVISION

Date Novbember 27, 1984

TO: Judge Manuel Menendez, Circuit Judge
Family Law Division

From: Carole S. Priede, Sr. Counselor, Juvenile Court

. . . . (Pages 571 to the bottom of page 575)

EVALUATION AND RECOMMENDATION

. . . It is this counselor's impression that the best interest of the child is served by placing the child with a natural parent unless it becomes apparent that the natural parent is a detriment to the child. Leslie Bates admits that she has stayed at the trailer of Larry Boggs and also that he has stayed in her trailer. Leslie Bates admittedly dated a man who was later convicted of sexual assault, but states she no longer has contact with Ray Yarborough. The Counselor assumes that Leslie Bates' mother is not married to Chuck Utterback since there has been no marriage license produced to verify the marriage. These facts alone are not enough, in the opinion of the counselor, to warrant Leslie Bates losing custody of her daughter. What is of major importance is the allegation of medical neglect. If the court can determine that the medical information produced substantiates medical neglect by the mother and that conclusion is not based on only what the Wisharts have presented to the Doctors, then the counsellor would recommend that the Wisharts retain custody of Tiffany with the mother having visitation rights. If the medical neglect

cannot be substantiated, the counselor would recommend that Leslie Bates be awarded custody of Tiffany with visitation rights to the Wisharts and Randy Bates. (Emphasis added)